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THE FALN AND MACHETEROS CLEMENCY: MISLEADING EXPLANATIONS, A RECKLESS
DECISION, A DANGEROUS MESSAGE

THIRD REPORT

by the

COMMITTEE ON GOVERNMENT REFORM

together with

DISSENTING AND ADDITIONAL VIEWS

Available via the World Wide Web: <http://www.house.gov/reform>

December 10, 1999.--Committed to the Committee of the Whole House on
the State of the Union and ordered to be printed

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LETTER OF TRANSMITTAL

House of Representatives,
Washington, DC, December 10, 1999.

Hon. J. Dennis Hastert,
Speaker of the House of Representatives,
Washington, DC.

Dear Mr. Speaker: By direction of the Committee on
Government Reform, I submit herewith the committee's third
report to the 106th Congress.

Dan Burton,
Chairman.

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December 10, 1999.--Committed to the Committee of the Whole House on
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Mr. Burton, from the Committee on Government Reform submitted the
following

THIRD REPORT

On November 10, 1999, the Committee on Government Reform approved and adopted a report entitled ``The FALN and Macheteros Clemency: Misleading Explanations, A Reckless Decision, A Dangerous Message.'' The chairman was directed to transmit a copy to the Speaker of the House.

FINDINGS OF THE COMMITTEE ON GOVERNMENT REFORM

The Committee on Government Reform has conducted an investigation of the President's decision to offer clemency to 16 FALN and Macheteros terrorists. Subpoenas were issued to the White House for documents, a public hearing was held on September 21, 1999, and this report has been issued. The Committee has reached the following conclusions as a result of its investigation:

Some Within the White House Saw Political Benefit in the Release of These Terrorists. One of the key White House staff members during the clemency process wrote that the release of the 16 terrorists would ``have a positive impact among strategic Puerto Rican communities in the U.S. (read, voters).'' Other notes produced to the Committee indicate that White House personnel believed that certain Congressmen would not vote with the President unless he committed to releasing the terrorists. Jeffrey Farrow, a key Presidential adviser on this issue, wrote in an e-mail:

We should think about a meeting soon with Reps.
Gutierrez, Velazquez, and Serrano on the Puerto Rico

(1)

independence crimes prisoners issue. They have requested one with the POTUS but the options include the VP and John as well. The issue should be resolved soon--the petitions have been before us for a long time. The VP's Puerto Rican position would be helped: The issue is Gutierrez's [sic] top priority as well as of high constituent importance to Serrano and Velazquez.

The Sentences Imposed Upon the FALN and Macheteros Prisoners Were Fair. The President and his spokesmen represented that the 16 offered clemency had served sentences in excess of what they would now receive under the sentencing guidelines. This is not true. According to the U.S. Sentencing Commission, which analyzed this matter specifically, "the federal sentencing guidelines generally would call for sentences as long as or longer than those actually imposed, if the defendants had been sentenced under current law." Furthermore, less than 9 months before the President and his spokesman made these statements, a senior Justice Department official informed a Member of Congress, in writing, "[t]he sentences are in line with sentences imposed in other cases for similar terrorist activity." Given the President's divergence from the Sentencing Commission and his own Justice Department, the Committee believes he should waive executive privilege and release the information he relied upon to make his public representations.

The President and His Spokesman Misrepresented Facts Concerning the Terrorists. The President communicated that the 16 terrorists offered clemency were being held in prison "in effect by guilt by association." In fact, they were incarcerated because they had committed serious crimes and had been sentenced for those crimes. The individuals in question were not the non-violent wing of the FALN or Macheteros. They built bombs, were engaged in a wide-ranging conspiracy, and committed crimes that justified lengthy prison terms. There has been no suggestion that there were errors in the sentencing process.

Those Offered Clemency Were Violent Offenders. In the days after the clemency offers were made, the President made an effort, through his surrogates, to convince the American people that those offered clemency were non-violent offenders. For example, National Security Adviser Sandy Berger, appearing on national television at a time when this issue was headline news (and therefore likely to be the subject of contemporaneous briefings), said "[t]hey're not individuals who personally were involved in violence." Below are some examples of the "non-violent" offenders offered clemency by the President:

Oscar Lopez: An individual so "non-violent" that he wouldn't renounce violence to get out of prison. In addition to crimes committed in furtherance of FALN goals, he plotted two escapes from Federal prison. One was from Leavenworth Penitentiary and, according to a Victim Impact Statement, he "planned to blow up Fort Leavenworth with the most powerful plastic explosives known to the military, riddle guard towers with rounds from automatic weapons, and throw grenades in the path of those who pursued them. To achieve their goals, Lopez and Brown considered killing the inmates who threatened Richard Cobb, killing George Lebosky after they became suspicious of him, and killing firearms dealer Michael Neece to gain his weapons." He set in

motion plans to obtain the following for his escape attempt: fragmentation grenades, smoke grenades, phosphorus grenades, 8 M-16 rifles, 2 silencers, 50 pounds of plastic C-4 explosives, 8 bulletproof vests, 10 blasting caps to use with plastic explosives, 100 30-shot clips to use with automatic weapons. In Lopez' probation officer's assessment, ``[Lopez'] level of remorse, rehabilitation and positive regard for this court's process is minimal, if not nonexistent. He demonstrates a sustained consistent commitment to the use of violence and weapons. He will use any means to gain freedom for the purpose of undermining the principles of the United States government. He has already determined that human life is expendable for this purpose.''

Juan Segarra-Palmer: In 1987, the U.S. Court of Appeals for the Second Circuit found that: ``The [Federal] district judge also found that [Juan] Segarra-Palmer had organized and taken part in the attack in Puerto Rico on a United States Navy bus taking sailors to a radar station, on December 3, 1979, in which two sailors were killed and nine wounded.''

Edwin Cortes: While planning Oscar Lopez' escape from Federal prison, the following statement by Cortes was recorded by the FBI: ``[y]es, but she [Alejandrina Torres--another recently freed terrorist] has to have it loaded and cocked further back. If they have to shoot, they can shoot.''

Finally, the seditious conspiracy counts in the indictments of 14 of the individuals offered clemency included the construction and planting of explosive and incendiary devices (bombs) at 28 separate locations.

Those Offered Clemency Were Very Unlikely

Candidates for Clemency. Prior to the offer of clemency to the 16 FALN and Macheteros terrorists, President Clinton had received 3,229 requests for clemency. He had acted favorably on only 3 of these requests. The 16 terrorists appear to be most unlikely candidates. They did not personally request clemency. They did not admit to wrongdoing and they had not renounced violence before such a renunciation had been made a quid pro quo for their release. They expressed no contrition for their crimes, and were at times openly belligerent about their actions. Some had been involved in escape attempts from Federal prison. One committed parole violations and was re-incarcerated. Some violated prison regulations, including possessing a weapon and a key capable of opening handcuffs.

The White House Seemed to Want Clemency More Than the Terrorists. Notwithstanding the fact that the 16 did not express enough personal interest in the clemency process to file their own applications, the White House appeared eager to assist throughout the process. Meetings were held with supporters, and some senior staff even suggested ways to improve the likelihood of the President granting the clemency. Overall, the White House appears to have exercised more initiative than the terrorists themselves. For example, it was a White House working group that suggested President Carter be approached and that a letter be requested. In another peculiar turn of events, a senior adviser on this issue appeared to coordinate a meeting with supporters inside the White House with a demonstration outside the White House. In addition, notes obtained by the Committee indicate that White House aides planned to identify ``liberal supporters in key media outlets'' in an effort to drum up more support for clemency. At the Department of Justice, the Deputy Attorney General at one point tasked the Pardon Attorney with calling a congressional office

to ``see where we stood on getting'' a statement addressing repentance. It is highly inappropriate that members of the President's Working Group and the Justice Department would either organize outside support for the clemency or reach out to prod proponents of clemency to do things that made it easier for the President to find in their favor.

Some White House Employees Thought the 16 Terrorists Were Political Prisoners. At least one White House employee consistently referred to the 16 as ``political prisoners.'' Given the crimes committed by the 16 terrorists, it is disturbing that anyone, let alone a White House aide whose salary is paid by the American people, would deem these individuals to be ``political prisoners.'' In addition, the Deputy Attorney General repeatedly described the 16 individuals offered clemency as ``nationalists,'' rather than terrorists.

The Department of Justice Appears to Have Changed its Recommendation to the White House in Order to Help the White House. The first Justice Department recommendation to the White House appears to have taken an unambiguous stand against clemency. Later, in June 1997, the White House recognized that the Justice Department still opposed clemency. In July 1999, however, according to a publicly reported leak from the Justice Department, a second report was sent by the Department of Justice to the President and no official recommendation was made. Instead, according to the Justice Department source, the report ``contained what law-enforcement officials said was a more carefully worded analysis that presented the President with multiple options for each prisoner, from unconditional release to no leniency whatsoever.'' If this is true, the Committee is concerned that the Justice Department side-stepped giving an unambiguous recommendation.

Law Enforcement Organizations Were Not Adequately Consulted Prior to the President's Decision. The FBI was not aware that the President was seriously entertaining the petitions for clemency. In addition, the Bureau of Prisons was not consulted. Had the White House asked for a review of the prisoners' recent telephone conversations, it would have found that several prisoners made remarks advocating violence.

The Victims Were Ignored. Victims were unable to get meetings with the White House or Department of Justice. Some had tried to schedule meetings; they were simply rebuffed. Activists seeking clemency did get such meetings. Furthermore, while clemency supporters were updated regularly on the progress of the petition, victims were not even informed of the clemency decisions.

The President's Clemency Offer Worked Against Solving Numerous Crimes. Generally speaking, violent criminals offered clemency have cooperated with law enforcement prior to their being offered clemency. In this case, the President did not even make cooperation with law enforcement a precondition for an offer of clemency. It remains a mystery why the President would not use every tool at his disposal to solve murders, robberies and bombings. Furthermore, by removing any incentive to cooperate, it is now very unlikely that any of the terrorists will ever provide any assistance to law enforcement.

The Clemency Decision Undermines the U.S.' Position in the International Fight Against Terrorism. The decision to grant clemency to the FALN and Macheteros terrorists sends a clear message that our demands for severe punishment, and our willingness to mete out severe punishment for terrorism, can be hollow. Of greater significance, it sends a message of encouragement to terrorists themselves.

The President Has Set a Different Standard for Terrorists Who Are U.S. Citizens. The FALN and Macheteros terrorists are U.S. citizens. While they have served lengthy

prison terms, the President has supported even more stringent penalties for members of foreign terrorist organizations. For example, he directed missiles to be fired on the camp of Osama bin Laden and an alleged chemical plant in the Sudan. Furthermore, he has been more inclined to strike at foreign terrorist organizations, regardless of the fact that the members have not been convicted of violent crimes under the protections of the U.S. Constitution and criminal justice system. From the perspective of the Committee, it undermines our international war on terrorism if we set a standard for U.S. terrorists that appears to be different than that set for foreign born terrorists. If sympathetic lobbyists can win the early release of terrorists in this country, our position is undercut when we ask other countries to take a hard line on terrorists of their own nationalities.

The Clemency Decision Empowered Two Dangerous Terrorist Organizations. As the FBI made clear in a written statement prepared for the Committee's September 21, 1999, hearing: ``The FALN and Macheteros terrorist groups continue to pose a danger to the U.S. Government and to the American people, here and in Puerto Rico. . . . The challenge before us is the potential that the release of these individuals will psychologically and operationally enhance the ongoing violent and criminal activities of terrorist groups, not only in Puerto Rico, but throughout the world.''

The President Should Waive His Claim of Executive Privilege. While he may be entitled to do so, the President should not continue to hide behind executive privilege. As many have done before him, the President should waive executive privilege and allow all citizens to gain a full understanding of what information he considered when he decided to release violent terrorists from prison.

I. Why the Committee Investigated the Offer of Clemency to the 16 Terrorists

On August 11, 1999, President Clinton extended offers of clemency to 16 terrorists incarcerated in Federal prison. Prior to these offers, he had offered clemency to only three Federal prisoners.\1\ Thus, offers of clemency to so many members of a terrorist organization came as a great surprise. In an attempt to understand the justification for the offers of clemency, this Committee subpoenaed documents from the White House and the Department of Justice. The President responded by claiming executive privilege over critical documents relating to his decision.\2\ In claiming executive privilege, the President refused to provide this Committee with material that would allow Congress an opportunity to see what recommendations were made to the President prior to his decision.

\1\ Department of Justice production 000734-000755, at 000747.
(Exhibit 1--This exhibit contains historical information related to grants of clemency).

\2\ Letter from Cheryl Mills, Deputy Counsel to the President, to the Honorable Dan Burton, chairman, Committee on Government Reform (Sept. 16, 1999) (Exhibit 2).

Granting clemency to violent terrorists is a matter of national significance. When the lives of American citizens are endangered and the victims of violent crime are treated with contempt, the oversight function of Congress is never more important. This is particularly true when the President of the United States not only withholds information from the people, but also uses the immense power of his office to mislead. This, in essence, is what occurred in the aftermath of the recent

offer of clemency to the 16 terrorists. In such a situation, Congress is obligated to exercise its oversight authority.

The White House would have the American people believe otherwise. On September 16, 1999, Presidential spokesman Joe Lockhart said: ``I think anyone who looks at the Constitution and understands what it means knows that Congress doesn't have an oversight role in this case.''\3\ Mr. Lockhart is wrong, and one can only wonder what prompted him to make such a statement. As Mr. Waxman, the ranking minority member of this Committee, stated at our September 21, 1999, hearing: ``the President's decision was, as he said, on each one individually. Whether he is right or wrong, we will have to try to get as much information as we can to make a judgment.''\4\ Notwithstanding the President's claim of executive privilege, this has been what the Committee has tried to do.

\3\ Joe Lockhart, White House Press Secretary, daily White House press briefing (Sept. 16, 1999). Later, in the same interview, Mr. Lockhart said: ``as far as I can tell there is no legitimate oversight role here.''\ Id.

\4\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (Sept. 21, 1999) (remarks of Representative Henry Waxman).

Prior to the President's offer to the 16 FALN and Macheteros terrorists, he had received 3,229 requests for clemency. He had awarded early release to only three of these federal prisoners. This represents the lowest percentage granted by any President since 1900, the date the Federal Government began keeping relevant statistics.\5\ Thus, it came as a surprise that President Clinton would make 16 offers at the same time, that he appeared to ignore all or most of the traditional criteria for exercise of the clemency power, and that he acted to benefit not just one or two individuals, but an entire terrorist organization.

\5\ Department of Justice production 000734-000755. (Exhibit 1). See also Stuart Taylor, Jr., All the President's Pardons: The Real Scandal, National Journal, Oct. 30, 1999, at 3116. Taylor states that President Clinton had also ``pardoned 108 federal convicts who had finished serving their time.''\ Id. The percentage of clemency applications granted by some recent Presidents is as follows: President Kennedy--40.9 percent; President Ford--31.2 percent; President Carter--21.6 percent; President Reagan--12.6 percent; President Bush--4.2 percent; and President Clinton--3.4 percent. Id.

The Committee's interest in this issue was triggered by two concerns. First, the explanations that have been provided by the President and his spokesmen have not been accurate. For example, on September 9, 1999, the President told the American people that those offered clemency ``had all served sentences that were considerably longer than they would serve under the sentencing guidelines which control federal sentencing now.''\6\ Two days earlier, the President's spokesman stated: ``if you look at even the mandatory sentencing guidelines right now, most of these people have served longer terms than they would have served if they were sentenced now.''\7\ Ten days later, Mr. Lockhart reiterated this view when he said ``their sentences were in excess of what would be given now for those crimes under the mandatory minimum sentences.''\8\ Driving this point home, he continued: ``[t]hey had already served sentences that exceeded what they'd be sentenced for now under the minimum sentencing guidelines which all parties agree are tougher than they were 20 or 30 years ago.''\9\

\6\ President William J. Clinton, press conference (Sept. 9, 1999).

\7\ Joe Lockhart, White House Press Secretary, daily White House press briefing (Sept. 7, 1999).

\8\ Joe Lockhart, White House Press Secretary, daily White House press briefing (Sept. 17, 1999).

\9\ Id.

The position taken by the President and his spokesman, however, does not appear to be true. According to the U.S. Sentencing Commission, the Federal Sentencing Guideline range for the convictions of the 16 offered clemency would require a sentence of ``at least 360 months to life.'' \10\ Thus, the Sentencing Commission indicates a minimum sentence of 30 years, which would be served without the possibility of parole. This contradicts the President and his spokesman. Furthermore, a senior Justice Department official made the following statement on December 21, 1998: ``the sentences imposed in these cases were within the sole discretion of the federal judges who presided over them. The sentences are in line with sentences imposed in other cases for similar terrorist activity.'' \11\

\10\ Letter from Timothy B. McGrath, interim Staff Director, U.S. Sentencing Commission, to Dan Burton, chairman, Committee on Government Reform (Oct. 26, 1999), at 2. (Exhibit 3).

\11\ Letter from Dennis K. Burke, Acting Assistant Attorney General, to the Honorable James P. McGovern, U.S. House of Representatives (Dec. 21, 1998). Department of Justice production 1040475-1040476. (Exhibit 4).

A number of questions are therefore inevitable. What analysis did the President rely on? What were he and his spokesman referring to? Why won't the President release the analysis that supports the position he has taken? These are the types of questions that suggest congressional oversight. If factual representations are being made, and it is not apparent where the facts come from, there is significant cause for concern.

Another major area of concern is the President's statement that: ``I did not believe they should be held in incarceration in effect by guilt by association.'' \12\ This point attempts to steer people away from the fact that those offered clemency were convicted of actual crimes and sentenced accordingly. The President's spokesman, Mr. Lockhart, also supported the President's argument when he said ``the point we have tried to make is we--our justice system is based on you serve time for the crime you're convicted of, not the crime people believe you're guilty of.'' \13\ Earlier, Mr. Lockhart had made that point with even more emphasis:

\12\ President William J. Clinton, press conference (Sept. 9, 1999).

\13\ Joe Lockhart, White House Press Secretary, daily White House press briefing (Sept. 17, 1999).

You know, we have a system of justice here. You know very well--you may not want to tell your listeners what these people were convicted of, but the justice system knows. The President's decision was based on looking at the sentencings, the average sentence for crimes, looking at the mandatory minimum sentences that have come in subsequent to the incarceration of these people[.] \14\

\14\ Joe Lockhart, White House Press Secretary, daily White House press briefing (Sept. 8, 1999).

These statements appear to be an effort to steer people away from the facts. To date, there has been no suggestion that there was any error in the sentencing of the 16 individuals offered clemency. They were not imprisoned because they associated with criminals. They were not given lengthy sentences because they were close to people who had committed worse crimes than they had. In fact, with a few exceptions, the 16 were the backbone of organizations that killed a number of people and planted over 130 bombs. But for their code of silence, a function of their complicity in numerous serious crimes, all FALN and Macheteros cases would probably have been solved by now. By freeing these individuals--and thereby removing all incentive for cooperation--the President has worked to guarantee that a number of murders will not be solved. Furthermore, the President has made no attempt to have Congress re-evaluate the statutory bases of the convictions. If the President genuinely believed the statutes resulting in convictions were unfair, it follows that he would ask Congress to change the law.

The attempt to depict those offered clemency as a group who were less culpable than other FALN or Macheteros members ignores clear evidence, including videotape footage of some of those offered clemency making bombs. It ignores the fact that one of the individuals offered clemency planned two escapes from prison, planned to disable a guard tower with fragmentation grenades and gunfire, and approved a plan to murder a gun dealer. It ignores the fact that another individual offered clemency kept in close contact with the one FALN member who succeeded in escaping from Federal prison. It also ignores a Federal court opinion which states: ``[t]he district judge also found that [Juan] Segarra-Palmer had organized and taken part in the attack in Puerto Rico on a United States Navy bus taking sailors to a radar station, on December 3, 1979, in which two sailors were killed and nine wounded.'' \15\ Indeed, the effort to portray those who were offered clemency as unfairly tarred by association with other more violent criminals appears to be a calculated effort to mislead people. In short, those offered clemency committed crimes, which resulted in appropriate sentences to lengthy terms of incarceration.

\15\ U.S. v. Melendez-Carrion, 820 F.2d 56, 58 (2nd Cir. 1987)
(emphasis added).

Apart from basic misrepresentations about factual matters, it also appears that the President failed to take into account all sides of this issue. In fact, the President seemingly failed to take into account certain basic types of information that would normally be significant factors in the clemency process. For example, victims were ignored. The Federal Bureau of Prisons was not asked to review tapes of telephone calls to and from prison to determine whether individuals were remorseful for their crimes or might be future threats to the community.\16\ Even some of the alleged supporters of clemency turned out to be less than enthusiastic in their support. For example, Mr. Lockhart stated that ``this is an issue that the Council of Churches, Cardinal O'Connor, Desmond Tutu and former President Carter have all urged the President to take action on.'' \17\ The implication of this statement is that those cited asked for clemency to be granted. This, however, is what Cardinal O'Connor recently said: ``I did not ask for the release of the Puerto Rican federal prisoners called FALN.'' \18\ Similarly, Bishop Tutu did not call for the release of the 16 terrorists. Rather, he wrote the President ``I appeal to

your office on behalf of my brother Bishop [of Puerto Rico] to consider clemency for these prisoners.' \19\ This contrasts with what the President himself said about Bishop Tutu's position: ``Bishop Tutu and Coretta Scott King also wrote to seek clemency for the petitioners, since they had received `virtual life sentences' and `have spent over a decade in prison, while their children have grown up without them.' '' \20\ Bishop Tutu did not make these comments, nor did he do what the President said he did. The misleading use of respected individuals to justify the clemency decision is another cause of great concern.

\16\ This is particularly important because the public record made by the 16 prisoners indicated no contrition and a propensity to continue their terrorist activities. While the government might not normally need to go to such lengths, those considered for clemency are not normally unrepentant terrorists. In a situation where there is concern about the message sent by the grant of clemency, and the potential danger to the community, it appears that, at a minimum, the President would have wanted to know whether the prisoners' own words would discourage a grant of clemency.

\17\ Joe Lockhart, White House Press Secretary, daily White House press briefing (Sept. 7, 1999).

\18\ Cardinal John J. O'Connor, FALN: Clarifying the Record, Catholic New York, Sept. 16, 1999, at 5. (Exhibit 5).

\19\ Letter from the Anglican Archbishop of Cape Town, the Most Reverend Desmond M. Tutu, D.D., F.K.C., to President W. Clinton (Aug. 28, 1995) (emphasis added). (Exhibit 6). It is also of some interest that Archbishop Tutu did not even ask that the President consider clemency for 2 of the 16 ultimately offered clemency--Roberto Maldonado-Rivera and Norman Ramirez-Talavera.

\20\ Letter from Bill Clinton, to Honorable Henry Waxman (Sept. 21, 1999) at 2. (Exhibit 7).

The President also said he ``refused to commute the sentence of Carlos Alberto Torres, who had been indicted by a federal grand jury in 1977 on explosive charges, was identified as the leader of the group, and had made statements that he was involved in a revolution against the United States and that his actions had been legitimate.' \21\ If this was the standard used for not commuting sentences, it was certainly not applied in a consistent fashion. Others who were offered clemency do not survive the standard articulated by the President--they were indicted on explosives charges, some were described as leaders of the organizations, and they spoke in favor of revolution against the United States and threatened violence against those involved in the judicial process. Oscar Lopez not only satisfied all the criteria for no clemency, he had planned a violent escape from Leavenworth Penitentiary.

\21\ Id. at 3.

The President also stated unambiguously that ``political considerations played no role in the process.' \22\ Documents received from the White House indicate that this is not true. Although the President might maintain that politics played no role in the process from his perspective, it is abundantly clear that other White House personnel who were intimately involved in advising the President were well aware of political considerations and saw the political benefit of offering clemency to the terrorists. For example, Mayra Martinez-Fernandez, Special Assistant to the co-chair of the Interagency Working Group on Puerto Rico, thought that the release of the terrorists would ``have a positive impact among strategic Puerto Rican communities in the U.S. (read voters).' \23\

Other notes produced to this Committee show that the Interagency Working Group on Puerto Rico understood that the clemency issue had a significant domestic political importance. One set of notes makes the following point: ``[Congressmen and Congresswoman] Velazquez, Gutierrez and Serrano not voting with President on some important legislation unless he commits to release prisoners right after 1996 elections.'' \24\ Thus, it appears that the President's statement that politics played no part in the clemency process is, at best, misleading.

\22\ Id. at 4.

\23\ Memorandum from Mayra Martinez-Fernandez, to Jeffrey Farrow (Oct. 24, 1994). White House production CL 15537-15538. (Exhibit 8).

\24\ Handwritten notes of Mayra Martinez-Fernandez, Special Assistant to the Co-Chair of the Working Group, undated. White House production CL 15554-15558. (Exhibit 9).

Finally, it is of some concern to the Committee that the President's staff--and the President--appear to have arrived at the decision to offer clemency before relevant information had been received. The facts received to date make it appear that the decision to offer clemency was made regardless of facts, and that efforts were made once the decision was reached to help the terrorists in spite of their prior refusals to help themselves.

Presented with misleading rationales for the clemency offers, this Committee has made an effort to provide the public with a full explanation of the factual background of this issue. The Committee has subpoenaed documents from the White House and the Justice Department, held public hearings involving interested parties and government officials, and prepared this report. The Committee also reviewed testimony presented to other congressional committees. While the Committee recognizes that the Constitution confers on the President an absolute power to grant clemency to those convicted in Federal court of crimes,\25\ the Constitution most assuredly does not prohibit Congress from exploring the facts of the clemency process and inquiring into the rationale for its exercise.

\25\ The U.S. Constitution provides that the President ``shall have power to grant reprieves and pardons for offenses against the United States, except in matters of impeachment.'' U.S. Const., Art. II, Sec. 2. The term ``clemency'' refers to all official acts of leniency toward criminal offenders, including pardons, reprieves, amnesty, remissions of fines, and commutations. See Kobil, Daniel T., *The Quality of Mercy Strained: Wrestling the Pardoning Power from the King*, 69 Tex. L. Rev. 569, 575-78 (1991).

Given the misrepresentations made in this matter, the Committee believes the President should rescind his claim of executive privilege, and make all documents previously withheld available to Congress and the American people. While he may be permitted to do so, the President should not continue to hide behind executive privilege. As many have done before him, the President should waive executive privilege and allow all citizens to gain a full understanding of what he took into account when he decided to release violent terrorists from prison.

II. Factual Background

On August 11, 1999, President Clinton offered a grant of clemency to 16 individuals convicted and incarcerated for their activities while members of clandestine terrorist organizations

promoting the independence of Puerto Rico through violent means.\26\ The groups involved were the Armed Forces of Puerto Rican National Liberation ('FALN' or in Spanish, Fuerzas Armadas Liberacion Nacional Puertorriquena) and the Popular Boricua Army (Ejercito Popular Boricua), commonly known as the Macheteros.\27\ Throughout the late 1970's and mid-1980's these groups claimed responsibility for numerous bombings and robberies, causing a reign of terror in both the United States and Puerto Rico.\28\ The FALN operated in the continental United States, while the Macheteros were active mostly in Puerto Rico.

\26\ Executive grant of clemency to Elizam Escobar, Ricardo Jimenez, Adolfo Matos, Dylcia Noemi Pagan, Alicia Rodriguez, Ida Luz Rodriguez, Luis Rosa, Carmen Valentin, Edwin Cortes, Alberto Rodriguez, Alejandrina Torres, Oscar Lopez Rivera, Juan Enrique Segarra-Palmer, Antonio Camacho-Negron, Roberto Maldonado-Rivera, and Norman Ramirez-Talavera, Aug. 11, 1999. (Exhibit 10).

\27\ See U.S. v. Torres, 83 CR 494 (N.D. Ill. 1985) (Indictment) (Exhibit 11); U.S. v. Torres, 77 CR 886 (N.D. Ill. 1980) (Indictment) (Exhibit 12).

\28\ Oversight on the Operations of the Federal Bureau of Investigation. Hearing before the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary, 97th Cong., 2d Sess. 63 (1982); FALN Communiques dated Oct. 26, 1974 (Exhibit 13), Dec. 11, 1974 (Exhibit 14), Jan. 24, 1975 (Exhibit 15), and Apr. 2, 1975 (Exhibit 16); see also Appendix I.

The 16 individuals granted clemency were arrested and later convicted in three separate groups. The first group consisted of FALN members Elizam Escobar, Ricardo Jimenez, Oscar Lopez Rivera, Adolfo Matos, Dylcia Pagan, Alicia Rodriguez, Ida Luz Rodriguez, Luis Rosa, and Carmen Valentin.\29\ This group was tried in the Northern District of Illinois, in Chicago, and was found guilty in February 1981. The second group of individuals also was FALN members and was tried in the same district in Chicago in 1985. The three members were Alejandrina Torres, Edwin Cortes, and Alberto Rodriguez.\30\ The last group of individuals was connected to the Macheteros and was tried in 1989 in Connecticut: Juan Enrique Segarra-Palmer, Antonio Camacho Negron, Norman Ramirez Talavera and Roberto Maldonado Rivera.\31\

\29\ Exhibit 12--Indictment.

\30\ Jose Rodriguez also was indicted and convicted with the other three. However, he chose to defend himself and was represented by an attorney. In addition, he denied membership in the FALN. He is no longer in prison and was not part of the clemency. Exhibit 11--Indictment.

\31\ Exhibit 11--Indictment.

United States law enforcement first learned of the existence of the FALN on October 26, 1974, the date the group issued a communique taking credit for five bombings in New York.\32\ The communique stated:

\32\ Exhibit 13--FALN communique (Oct. 26, 1974).

Today, commando units of FALN attacked mayor [sic] Yanki [sic] corporations in New York City . . . These actions, along with bombing of major department stores, for three consecutive days in late spring, and the dynamite blasts at Newark Police Headquarters and City Hall, demonstrate what we have said since 1969: that the Puerto Rican people organizing and arming in order

to form a Peoples Revolutionary Army which will rid Puerto Rico of yanki [sic] colonialism [sic]. We have opened two fronts, one in Puerto Rico the other in the United States, both nourished by the Puerto Rican

people and allies within Northamerica [sic].

At the time of the first attacks, law enforcement had no leads on who was involved with the FALN. Ultimately, over the next decade, FALN activities resulted in 72 actual bombings, 40 incendiary attacks, 8 attempted bombings and 10 bomb threats, resulting in 5 deaths, 83 injuries, and over \$3 million in property damage.\33\

\33\ Letter from Jon P. Jennings, Acting Assistant Attorney General, to Dan Burton, chairman, Committee on Government Reform (Sept. 23, 1999) (forwarding redacted FBI written opening statement on FALN clemency as attachment) (unnumbered) (Exhibit 17).

Similar to the FALN, the existence of the Macheteros became publicly known when the group sent a communique to the United Press International in which they claimed credit for the death of a Puerto Rican police officer on August 24, 1978.\34\ The goals of the Macheteros were complete autonomy and sovereignty for Puerto Rico. In order to achieve their goals, the Macheteros conducted an armed struggle against the U.S. Government, mainly represented through attacks on military and police, in several cases causing the death of U.S. servicemen. In a January 1981 attack, Macheteros commandos infiltrated a Puerto Rican Air National Guard base and blew up 11 planes, causing approximately \$45 million in damages.\35\

\34\ Luis Feldstein Soto, Puerto Rican Terrorists Taunt FBI, but Agency Is Closing in, Houston Chron., Sept. 15, 1985, at A7.

\35\ Id.

The capture and conviction of the individual members of the FALN and Macheteros brought an end to the reign of terror in Puerto Rico and the United States. Although a few random assaults may have occurred, mostly in Puerto Rico, the continual assaults on New York, Chicago, and law enforcement and Naval officers in Puerto Rico virtually came to a halt with the capture of the individuals to whom the President has offered clemency. Every major law enforcement group has opposed the commutation of the prison sentences being served by these members of the FALN or Macheteros.

a. the capture and conviction of the individuals offered clemency

After the first FALN communique, law enforcement agents worked diligently to identify who was involved with the FALN. The FBI formed a team of investigators that operated in the Puerto Rican neighborhoods in both New York and Chicago. However, it was not until December 1976, that they made any significant advances. Chicago police located an FALN ``bomb factory'' which led to the identification of several FALN members, including Ida Luz Rodriguez and Oscar Lopez Rivera.\36\ All of those identified immediately went underground, leaving their previous lives behind. Although they were terrorists, planting bombs and conducting armed robberies, the FALN members also blended into the community as school teachers and government workers. They were difficult to identify because they literally led double lives. They had jobs

and children and never told anyone, not even their closest family members and friends, that they were members of the FALN.\37\ One former FALN member, Freddie Mendez, explained that, ``he and his codefendants and other members did not socialize with one another. He said that they came together only for official FALN activities and then separated. When apart they occupied themselves with work, school and socialized with friends who were not aware that they were in the FALN.''\38\

\36\ Memorandum from U.S. Attorney's Office to Probation Office, re: Alejandrina Torres, Edwin Cortes, Alberto Rodriguez, and Jose Rodriguez (Aug. 30, 1985). Department of Justice production 090047-090059. (Exhibit 18).

\37\ Gary Marx, Terrorism on Trial: Justice and the FALN, Chicago Tribune, Oct. 22, 1995, at Magazine 22.

\38\ Presentence report of Oscar Lopez-Rivera, Department of Justice production 120031-120044, at 120040.

1. History of the FALN's reign of terror in Chicago and New York

Although the FALN's initial bombings may have been symbolic in nature, that soon changed.\39\ On December 11, 1974, the FALN called the New York City Police Department to report a dead body.\40\ When a policeman arrived at the abandoned tenement building to investigate, he walked into a booby-trapped explosive device. The explosion left him maimed and permanently disabled. The FALN issued a communique taking credit for the bombing, which they described as an ``explosive attack against members of the police.''\41\ The communique explained that the attack was in response to the death of a fellow Puerto Rican independentista, Martin Perez, in a Florida prison. Although the FALN characterized Perez' death as an assassination, authorities found that he committed suicide by hanging himself in his cell. The communique warned: ``[t]o make it clear, for every repressive action taken against our communities or against FALN independentistas, we will respond with revolutionary violence.''\42\

\39\ Authorities compiled a list of FALN bombings from 1974 through 1980. Department of Justice production 1041690-1041692. (Exhibit 19).

\40\ Presentence report for Ricardo Jimenez, Department of Justice production 020045-020057, at 020048.

\41\ Exhibit 14--FALN communique dated Dec. 11, 1974.

\42\ Id.

Several weeks later, the FALN struck again in what they described as a retaliatory attack for a bombing in Puerto Rico. The FALN communique calls attention to their belief that the CIA had plotted the incident.\43\ Nevertheless, it is clear that the January 24, 1975, FALN bombing can be meant only to have caused death, destruction and injury, as they planted a timed explosive device to detonate during the busy lunch hour at New York City's historic Fraunces Tavern. The blast killed 4 people, injured over 60 and caused extensive property damage.\44\ In the communique, the FALN stated, ``[w]e, FALN, the Armed Forces of the Puerto Rican Nation take full responsibility for the especially detornated [sic] bomb that exploded today at Fraunces Tavern with reactionary corporate executives inside.''\45\ The communique ended with the warning, ``[y]ou have unleashed a storm from which you comfortable Yankis [sic] cannot escape.''\46\

\43\ Exhibit 15--FALN communique dated Jan. 24, 1975.

\44\ Presentence report for Ricardo Jimenez at 020048.

\45\ Exhibit 15--FALN communique dated Jan. 24, 1975.

\46\ Id.

The FALN continued its attacks on what it considered
``Yanki [sic] imperialism'' with the bombing of four New York
City buildings on April 2, 1975. The communique explained:

The bombing of the Anglers Club: an exclusive
millionaires [sic] club that boasts of members like the
Rockefellers, was a retaliatory [sic] attack against
that sector of the North American ruling-class which is
directly responsible for the actions of the C.I.A. and
for the wave of repression which is being murderously
implemented in Puerto Rico. . . . Our attack on January
24, 1975 was not in anyway directed against working-
class people or innocent North Americans. The targets
of our attack were bankers, stock brokers, and
important corporate executives of monopolies and multi-
national corporations. These are not friends of the
working people. But the enemies of humanity everywhere
[sic].\47\

\47\ Exhibit 16--FALN communique dated Apr. 2, 1975.

Shortly after the April bombings, in June 1975, the FALN
carried out its first bombings in the Chicago area. They
claimed credit for two bombs that exploded downtown. Another
fatal attack occurred on August 3, 1977, in New York. The FALN
placed a bomb inside the Mobil Oil employment office, and set
it to detonate during the early morning rush hour. The blast
killed one man and wounded several others.\48\ In addition to
their bombings, the FALN, operating mainly in New York and
Chicago, also began to set off incendiary devices in numerous
busy downtown department stores.\49\

\48\ Presentence report of Ricardo Jimenez at 020049.

\49\ Id.

On July 12, 1978, a powerful explosion occurred in a
residential building in New York City. The subsequent
investigation revealed that the apartment was an FALN ``bomb
factory.'' \50\ Police discovered that the resident of the
apartment, FALN member William Morales, was constructing a pipe
bomb when the explosion occurred.\51\ Morales was seriously
injured, losing portions of both hands and his eyesight in one
eye.\52\ Examination of the apartment turned up materials
linked to the FALN members who had gone into hiding in 1976:
Oscar Lopez-Rivera, Ida Luz Rodriguez, Maria Haydee Torres, and
Carlos Alberto Torres.\53\ Even as police were clearing out the
New York apartment, incendiary devices that the FALN previously
had planted ignited in several department stores.\54\ In
addition to other evidence, the police found an FALN manual in
the apartment.\55\ The handbook states, ``The introduction of
this set of rules and regulations is done in the interest of
preventing errors which traditionally have allowed the enemy to
strike death blows to revolutionary organizations.'' \56\ Among
other suggestions, the handbook states that a guerrilla group
``should start out with an operational army of no less than 50
strictly clandestine guerrilla fighters.'' \57\

\50\ Id. at 020050.

\51\ Id.

\52\ Id.

\53\ Id.

\54\ Presentence report of Ricardo Jimenez at 020050.

\55\ Murray Weiss, Leader's Chilling Textbook of Terror, N.Y. Post,

Aug. 31, 1999, at 12.

\56\ Id.

\57\ Id.

Morales, who was injured in the July 12, 1978, explosion, was tried and convicted in 1979 and sentenced to 99 years in prison on State and Federal weapons and explosives charges.\58\ Several months after his conviction, Morales made an incredible escape from a third-floor prison room at Bellevue Hospital in New York. Morales had been transferred to Bellevue to be fitted with artificial hands. Prior to the surgery, Morales somehow used bolt cutters to tear open the steel security screen of the cell window and then shimmied down the three story, 40-foot drop.\59\ Federal prosecutors say that members of the Black Liberation Army and one of his attorneys assisted him in making his getaway.\60\ Morales escaped to Mexico, where he was later convicted of murdering a Mexican police officer. Mexico rebuffed the United States' requests for extradition of Morales while he was serving out his sentence in a Mexican prison. Later, Mexican authorities allowed him to flee to Cuba, where he was given political asylum.\61\ He has never served the 99-year U.S. sentence. Morales remains in Cuba, and has petitioned the President to allow him to return to the United States.

\58\ Douglas Montero, I Defend My Homeland: William Morales Talks to the Post, N.Y. Post, Sept. 12, 1999, at 5.

\59\ Former FALN member Alfredo Mendez told government investigators that Morales' attorney, Susan Tipograph, smuggled the bolt cutters into the hospital for Morales. He said that she ``strapped a pair of bolt cutters to her leg and smuggled them in to Morales.'' Tipograph denied the allegations. Douglas Montero, Cop Who Busted Bomber Fears for His Life, N.Y. Post, Sept. 18, 1999, at 6; Stanley Penn, Spreading Fear: New Terrorist Groups Are Appearing in U.S., Resembling Old Ones, Wall St. J., July 26, 1984; Cerisse Anderson, United Press Int'l, June 9, 1983.

\60\ Stanley Penn, Spreading Fear: New Terrorist Groups Are Appearing in U.S., Resembling Old Ones, Wall St. J., July 26, 1984.

\61\ Roberto Santiago, Terrorism American Style: The Guillermo Morales Story, the Plain Dealer, Aug. 1, 1993, at 8; Alex Devine, Fugitive Left Trail of Blood and Broken Lives, N.Y. Post, Sept. 12, 1999, at 5.

After the incident at the New York bomb factory, the FALN took some time to regroup. Law enforcement developed evidence that during that relatively quiet period, the FALN members had been active in other areas, including the invasion of the Oak Creek, WI Armory in January 1979, in order to steal weapons.\62\ During the operation, which ultimately was unsuccessful, FALN members held Armory employees hostage. It was not until October 1979 that they resumed their bombing operations. On October 17, 1979, the FALN took credit for simultaneous bombings in New York, Chicago, and Puerto Rico, where the FALN previously had not been active.\63\ They followed up with several bombings in the Chicago area about a month later.\64\

\62\ Presentence report of Ricardo Jimenez at 020051.

\63\ Id.

\64\ Id.

In mid-March 1980, FALN members took over the Carter/Mondale presidential campaign headquarters in Chicago, and the George Bush campaign office in New York.\65\ They were armed, and held several employees of the Carter/Mondale campaign hostage.\66\ The FALN members held guns to the heads of the

employees, forced them to lie down, and then tied them up.\67\
They then ransacked the headquarters, stole files, and spray
painted FALN slogans on the walls.\68\ Days after the invasion,
the FALN sent threatening letters to approximately 200 Carter/
Mondale supporters and Democratic National Convention delegates
in Illinois.

\65\ Id. at 020050.

\66\ Presentence Report of Elizam Escobar. Department of Justice
production 010036-010049, at 010043.

\67\ Id. at 010043.

\68\ Id.

2. The capture of the ``Chicago 11''

Shortly after the campaign break-ins, on April 4, 1980, 11
members of the FALN were arrested: Elizam Escobar, Ricardo
Jimenez, Dylcia Noemi Pagan, Carmen Valentin, Adolfo Matos,
Alfredo Mendez, Alicia Rodriguez, Luis Rosa, Maria Haydee
Torres, Carlos Torres, and Ida Luz Rodriguez.\69\ The arrests
occurred in two separate incidents on the same day. At
approximately 1:30 p.m., two armed men stole a truck from
Budget Rent-a-Car in Evanston, IL.\70\ Luis Rosa was later
identified as the main gunman at the Budget Rent-a-Car
office.\71\ ``At gunpoint, he ordered the personnel at the
Budget office to lay on the ground and crawl, or be killed.''
\72\ The truck was seen in a parking lot at Northwestern
University an hour after the robbery, and police waited for
someone to approach.\73\ Soon thereafter, a man and a woman
drove up to the stolen truck in separate vehicles, Luis Rosa
and Alicia Rodriguez.\74\ As police officers approached the
two, Rosa attempted to draw the loaded gun he was carrying.
However, he was overpowered by the police.\75\ Police then
apprehended FALN members Alicia Rodriguez and Luis Rosa, both
of whom were armed.\76\ In addition, police discovered that the
vehicles that the two were driving had been stolen at an
earlier time.\77\ Police later determined that Adolfo Matos had
driven the stolen truck to the Northwestern parking lot and
left it there to be picked up by Rodriguez and Rosa.\78\ Matos
and 10 other members of the FALN were apprehended later that
same afternoon in a residential neighborhood also in Evanston,
IL.\79\

\69\ Maria Haydee Torres and Carlos Alberto Torres were not granted
clemency.

\70\ Evanston Police Department Website, [www.evanstonpolice.com/
captured.htm](http://www.evanstonpolice.com/captured.htm).

\71\ Presentence report of Luis Rosa, Department of Justice
production 010554-010565, at 010561

\72\ Id. at 010561.

\73\ Evanston Police Department Website, [www.evanstonpolice.com/
captured.htm](http://www.evanstonpolice.com/captured.htm).

\74\ Id.

\75\ Presentence report of Luis Rosa at 010561.

\76\ Id.; presentence report of Ida Luz Rodriguez, Department of
Justice production 060034-060046, at 060042.

\77\ Evanston Police Department Website, [www.evanstonpolice.com/
captured.htm](http://www.evanstonpolice.com/captured.htm).

\78\ Presentence report of Adolfo Matos, Department of Justice
production 030038-030050, at 030046.

\79\ Id. at 030046.

At approximately 3:15 p.m., a resident of an Evanston
neighborhood called the police to report some suspicious
activity on her street.\80\ She had seen joggers around a van,
but had seen at least one of the joggers smoking.\81\ At 3:30

p.m., the responding officers approached the van and spoke with Carlos Alberto Torres, who was then on the FBI's ``most wanted list.'' \82\ The officer did not recognize him, and explained that a neighbor had called complaining of ``kids partying in a van.'' \83\ After some discussion the police officers were still not sure about the situation, and ordered everyone to get out of the van.\84\ One of the officers looked inside the van, but did not notice anything suspicious.\85\ The FALN members might have been permitted to go free if Alfredo Mendez' false mustache had not begun to slip from his lip.\86\ The officers immediately realized there was a problem and ordered the three FALN women to drop their bags. As that occurred, a group of backup police officers rushed to the scene with their weapons drawn.\87\ The nine arrested with the van were: Dylcia Noemi Pagan, Elizam Escobar, Ida Luz Rodriguez, Carmen Valentin, Carlos Alberto Torres, Maria Haydee Torres, Ricardo Jimenez, Adolfo Matos, and Alfredo Mendez.\88\ Found in the van were 13 weapons, including a sawed off shotgun and several pistols with the serial numbers obliterated.\89\

\80\ Evanston Police Department Website, www.evanstonpolice.com/captured.htm.

\81\ Id.

\82\ Gary Marx, Terrorism on Trial: Justice and the FALN, Chicago Tribune, Oct. 22, 1995, at Magazine 22.

\83\ Id.

\84\ Id.

\85\ Id.

\86\ Id.; Evanston Police Department Website, www.evanstonpolice.com/captured.htm.

\87\ Gary Marx, Terrorism on Trial: Justice and the FALN, Chicago Tribune, Oct. 22, 1995, at Magazine 22.

\88\ Presentence report of Ricardo Jimenez, at 020050.

\89\ U.S. v. Torres, 77 CR 886, (N.D. Ill. 1980).

a. The investigation

Law enforcement officials have two theories relating to the intentions of the FALN members that day. Some believed that the FALN was planning to kidnap wealthy industrialist Henry Crown or a member of his family, as the Crown residence was nearby.\90\ To support this theory, investigators found an intelligence dossier on Henry Crown in a New Jersey safe house used by the FALN.\91\ The other explanation for their presence in Evanston that day is that they were planning on robbing an armored car. At the time of their arrests, there was an armored truck carrying \$200,000 in cash parked at Northwestern University's loading dock.\92\ The authorities could never be sure as the 11 FALN members arrested refused to cooperate in any way with the authorities. They even refused to identify themselves and claimed to be ``prisoners of war.'' \93\

\90\ Presentence report of Adolfo Matos, at 030046.

\91\ Id. at 030046.

\92\ Gary Marx, Terrorism on Trial: Justice and the FALN, Chicago Tribune, Oct. 22, 1995, at Magazine 22.

\93\ Presentence report of Ricardo Jimenez, at 020051.

As the law enforcement officials continued the investigation, they discovered that the FALN had developed an intricate underground operation.\94\ The FALN had set up safe houses in Milwaukee, WI; Newark, NJ; New York City; and, Chicago, IL.\95\ Upon searching the various safe houses, investigators found, among other evidence, sets of false identification, fingerprints of the individuals arrested, and a list of the automobiles that had been stolen over the prior

year.\96\

\94\Id.
\95\Id.
\96\Id.

A search of the New Jersey safe house revealed a number of intelligence files on private individuals, including one on Henry Crown.\97\ The fingerprints of Carmen Valentin, Adolfo Matos, Elizam Escobar, Carlos and Maria Haydee Torres were found in the New Jersey safe house.\98\ Authorities also located a car stolen by the FALN near the house, although most of the documentation on the car was found in the safe house in Milwaukee, where the car was stolen.\99\

\97\ Presentence report of Adolfo Matos at 030046.
\98\ Presentence report of Carmen Valentin at 080050-080051.
\99\ Id. at 080050-080051.

Authorities searched Adolfo Matos' home in New York. There they found, ``a pamphlet containing a chronology of acts of violence perpetrated by the FALN and other groups of the armed clandestine movement, as well as reproductions of the FALN communiques which had been released claiming credit for bombings up to the date of publication.'' \100\ Identity papers for Ida Luz Rodriguez were found in Matos' home as well.\101\ In Elizam Escobar's home in New York, police found extensive lists containing the names and home addresses of various New York City police officers.\102\ Law enforcement officials also found a surveillance photo of an FBI agent.\103\ In addition, Escobar had maintained a personal calendar in code that included numerous FALN activities such as, ``the escape of William Morales, certain bombings, the armed robbery of a Purolator truck in Milwaukee, and most interestingly, a reference to `little presents for the Republicans.' '' \104\ The reference to Republicans coincides with FALN bombings of Republican campaign offices in New York and Chicago.\105\

\100\ Presentence report of Adolfo Matos at 030046.
\101\ Presentence report of Ida Luz Rodriguez at 060042.
\102\ Presentence report of Elizam Escobar at 010044.
\103\ Id.
\104\ Id.
\105\ Id.

The Milwaukee safe house was leased in one of the false names used by Ida Luz Rodriguez.\106\ Law enforcement fingerprinting showed that, at a minimum, the safe house had been used by Ida Luz Rodriguez, Dylcia Pagan, Maria Haydee Torres, Carmen Valentin, Luis Rosa, Elizam Escobar, Oscar Lopez Rivera, and Carlos Torres.\107\ The Milwaukee safe house contained a soundproofed firing range in the basement.\108\ A search of the house uncovered, ``a plethora of FALN-related evidence, including proceeds of various Wisconsin armed robberies, FALN literature, disguises, proceeds of armed takeover of the Chicago Carter-Mondale reelection headquarters, and the original stencil of a threat letter sent to more than a hundred Carter-Mondale delegates[.]'' \109\ In addition, investigators found a military manual that discussed weapons, explosives, terrorist tactics and past Puerto Rican acts of violence.\110\ Enclosed in that manual was a six page document which appeared to be some type of justification for what was called the ``military action'' taken at Fraunces Tavern in New York.\111\

\106\ Presentence report of Ida Luz Rodriguez at 060042.

\107\ Presentence report of Carmen Valentin at 080051; presentence report of Dylcia Pagan at 040044; presentence report of Ida Luz Rodriguez, at 060042; presentence report of Elizam Escobar at 010044; presentence report of Luis Rosa at 010561.

\108\ Presentence report of Carmen Valentin at 080051.

\109\ Presentence report of Luis Rosa at 010564.

\110\ Presentence report of Dylcia Pagan at 040044.

\111\ Id.

b. The trials

There were 11 FALN members apprehended in Evanston, IL on April 4, 1980. One of those individuals, Maria Haydee Torres, was transferred to the Federal district court in New York to stand trial. She had been implicated in the bombing of the Mobil Oil Building which caused the death of 26 year old Charles Steinberg.\112\ All 10 of the others apprehended were indicted in Federal district court in the Northern District of Illinois.\113\ In addition, law enforcement officials were still searching for Oscar Lopez Rivera, who also had been named in the indictment as part of the conspiracy, and was considered a fugitive.\114\

\112\ Presentence report of Maria Haydee Beltran Torres, Department of Justice production 1041480-1041486 at 1041482.

\113\ Exhibit 12--Indictment.

\114\ Id.

i. Ten Individuals Tried in Chicago.--According to a document containing instructions for FALN members found in the New Jersey safe house, members were advised to, ``make no statement if arrested and to declare themselves `prisoners of war' and to demand a transfer to military jurisdiction.'' \115\ In each of their presentence reports the following description of the defendants' conduct occurs:

\115\ Presentence report of Maria Haydee Beltran Torres at 1041483.

Each of these defendants, orally and in writing, since the time of their arrest on April 4, 1980, has claimed membership in a clandestine army and has claimed to be at war with the United States. Each has claimed to have been captured by the enemy while engaged in an armed action taking place in their war for independence from the United States. They chant revolutionary slogans, many of which are on court records ranging from, ``Long live the armed clandestine movement'' to ``Long live the FALN.'' In short, they do not deny doing the things for which they have been charged and convicted. They do, however, feel that as captured soldiers in a revolutionary struggle, they are entitled to be treated as prisoners of war and tried by international or military tribunal, or not tried at all. Based on this position, they have steadfastly refused representation to date, both in Chicago and New York, and they have witnessed their trials via loudspeaker and closed-circuit TV from their detention cells. They have made clear that they do not mind the imposition of lengthy prison terms because each believes that successful escape efforts will be arranged with the cooperation of the remaining members of their armed clandestine movement.\116\

\116\ Presentence report of Luis Rosa at 010562; presentence report of Dylcia Pagan at 040045; presentence report of Elizam Escobar at

010045; presentence report of Carmen Valentin at 080052; presentence report of Ida Luz Rodriguez at 060043; presentence report of Adolfo Matos at 030047; presentence report of Carlos Alberto Torres at 1041327. (Emphasis added.)

As the defendants refused to take part in their own trials, the judge entered pleas of innocent for all of them at the arraignment.\117\

\117\ United Press Int'l, Dec. 16, 1980.

As part of the indictment, the grand jury charged the 10 defendants with constructing and placing explosive and incendiary devices at numerous locations, specifically listing 28 sites, including: six banks, six department stores, the Chicago Police Department Headquarters, the Chicago Main Branch of the U.S. Post Office, the National Guard Armory, two County Buildings, the Republican Party Office, the Great Lakes Naval Base, two U.S. Military Recruiting Offices, and the Illinois Naval Militia Building.\118\ The prosecution presented 30 witnesses and 65 boxes of evidence to the jury in the course of the FALN trial. In the end, the jurors deliberated only 2 hours before convicting all of the defendants of conspiring to overthrow the U.S. Government, as well as other charges.\119\

\118\ Exhibit 12--Indictment.

\119\ United Press Int'l, Feb. 12, 1981.

At the end of their trials, the defendants were brought before the judge for sentencing. The courtroom turned into a political demonstration; as the judge handed down the sentences, the defendants sang, shouted, and called him a ``puppet'' and a ``clown.'' \120\ As she was being sentenced by the judge, Carmen Valentin shouted, ``[y]ou are lucky that we cannot take you right now. Our people will continue to use righteous violence. Revolutionary justice can be fierce, mark my words.'' \121\ Ricardo Jimenez shouted at the judge, ``[w]e're going to fight . . . revolutionary justice will take care of you and everybody else.'' \122\ Dylcia Pagan warned the judge and courtroom, ``[a]ll of you, I would advise you to watch your backs.'' \123\

\120\ The Associated Press, Feb. 19, 1981.

\121\ Id.

\122\ Id.

\123\ United Press Int'l, Feb. 19, 1981.

ii. Maria Haydee Torres.--Maria Haydee Torres, wife of FALN member Carlos Alberto Torres, was extradited to the Southern District of New York to stand trial for the bombing of the Mobil Oil Building in New York City which caused the death of Charles Steinberg.\124\ The New York prosecutors could place Mrs. Torres at the scene and link her to the bomb through fingerprint evidence, holding her responsible for one of the deaths caused by an FALN bomb. The Mobil Oil bombing occurred on August 3, 1977. Investigators were able to determine that a bomb consisting of two to three sticks of dynamite had been concealed in an umbrella placed on a coat rack in the employment office.\125\ Prosecutors explained how the bombing victim was killed, ``[t]wenty-six year old Charles Steinberg was in immediate proximity to the coatrack, and the rear of his head was blown off in the explosion, resulting in his immediate death.'' \126\

\124\ Presentence report of Maria Haydee Beltran Torres at 1041481.

\125\ Id.

\126\ Id. at 10411482.

The bomb was set to explode at 10:40 a.m., a busy time of the day when many people would be in the office.\127\ Very early on that morning, a young woman wearing sunglasses and a wide brimmed hat entered the employment office and asked to fill out an application.\128\ The woman began filling out the application, but inquired as to whether she was allowed to finish it at home. The receptionist told her no, and the woman left the application at the desk.\129\ Police were able to remove two fingerprints from the application and identified them as belonging to Maria Haydee Torres.\130\ The FALN later issued a communique taking credit for the Mobil Oil bombing.\131\ In addition, investigators were able to determine that the dynamite used in the Mobil Oil bombing had originally been stolen from a construction site in New Mexico. Because dynamite is marked with a ``date shift code'' on each stick, the agents were able to determine that the Mobil dynamite was part of the same batch found in the FALN safe house discovered in Chicago in November 1976.\132\

\127\ Id. at 1041481.

\128\ Id. at 1041482.

\129\ Id.

\130\ Id.

\131\ Id.

\132\ Id. at 1041483.

Similar to the other FALN defendants in Chicago, Maria Haydee Torres refused to participate in her trial and declared herself a prisoner of war.\133\ The jury found her guilty after a 4 day trial, and imposed a sentence of life imprisonment.\134\ The group that originally petitioned for clemency on behalf of the FALN members, Ofensiva '92, had also placed Mrs. Torres on the list. However, because she was convicted of an act that involved the death of another person, her name was removed from the list soon thereafter. Ofensiva '92 indicated that she would petition separately.

\133\ Id. at 1041484.

\134\ Id. at 1041483.

iii. Oscar Lopez Rivera.--In December 1980, FALN member Oscar Lopez Rivera was indicted along with the other 10 FALN members in Chicago, IL.\135\ However, he remained a fugitive until his capture on May 29, 1981.\136\ Lopez and a companion were in a car in Glenview, IL, when a police officer observed them driving erratically.\137\ The officer pulled them over and asked for identification, whereupon Lopez produced a false driver's license from Oregon.\138\ Lopez first told the officer that they were looking for a United Parcel Service building, then responded that they were looking for a nice spot to eat lunch.\139\ When the officer inquired as to where their lunch was, they were unable to produce their meal.\140\ A back-up police officer stood next to the car and noticed a gun, pliers, wire connectors and field glasses in the car, along with a large bag.\141\ The officers then arrested Lopez for the weapons violations and traffic offense.\142\

\135\ Exhibit 12--Indictment.

\136\ Presentence report of Oscar Lopez at 120035.

\137\ Id.

\138\ Id.

\139\ Id.

\140\ Id.

\141\ Id.

\142\ Id.

Investigators had determined that Oscar Lopez had been one of the national leaders of the FALN since its first public acts of violence in 1974. In addition, they received information about Lopez from former FALN member Freddie Mendez who testified about FALN activities, and Oscar Lopez in particular.\143\ Lopez' presentence report summarizes the evidence against Lopez and Mendez' testimony:

\143\ Id. at 120036.

Lopez has been personally involved in bombing and incendiary attacks across the country for at least five years prior to Mendez's [sic] involvement and knowledge, has been a prime recruiter for members of the underground terrorist group, and has been a key trainer in bombing, sabotage and other techniques of guerilla warfare. He has set up a series of safehouses and bomb factories across the country, the searches of which have uncovered literally hundreds of pounds of dynamite and other forms of high explosive, blasting caps, timing devices, huge caches of weapons and stockpiles of ammunition, silencers, sawed-off shotguns, disguises, stolen and altered identity documents, and the proceeds of the armed robberies of locations such as a National Guard Armory, Chicago's Carter-Mondale Re-Election headquarters, radio and communications companies, as well as a variety of stolen vehicles.\144\

\144\ Id.

Ultimately, Oscar Lopez-Rivera did not accept the President's offer of clemency. He remains incarcerated.

3. 1985 Chicago FALN group

On June 29, 1983, authorities arrested FALN members Alejandrina Torres, Edwin Cortes, Alberto Rodriguez, and Jose Rodriguez (the two Rodriguezes are unrelated).\145\ The Government was able to locate and identify the group as members of the FALN through former FALN member Freddie Mendez' cooperation with the government. Mendez previously had identified Alejandrina Torres and Edwin Cortes as likely members of the FALN.\146\

\145\ Brief for the United States, U.S. v. Rodriguez, 85-2802, at 1 (7th Cir.) [hereinafter Rodriguez brief].

\146\ Alejandrina Torres was the step-mother of Carlos Alberto Torres, who was found guilty of seditious conspiracy and other crimes, in the first FALN trial. Presentence report of Alejandrina Torres, Department of Justice production 100034-100044, at 100037.

Beginning in 1982, officers assigned to the anti-terrorism task force conducted surveillance of Cortes, and determined that he periodically traveled to an apartment building on the opposite end of Chicago from where he lived and worked.\147\ They soon discovered that Cortes and Alejandrina Torres were meeting in an apartment in the building.\148\ After further investigation, agents were able to secure court authorization to place a hidden camera and microphone in the apartment in order to monitor the activities occurring within the apartment.\149\ The apartment was known as the ``Buena safe house,' ' due to its street location.\150\ Eventually, agents

discovered another apartment, known as the ``Lunt safe house.''
\151\ Court-ordered surveillance was installed in that apartment as well. During 8 months of surveillance, law enforcement saw and overheard the four FALN members plan and commit various criminal acts.

\147\ Id.

\148\ Id.

\149\ Id.

\150\ The address was 736 West Buena, in Chicago, IL. Id.

\151\ The address was 1135 West Lunt, in Chicago, IL. Id.

a. The safe houses

Investigators found that FALN member Edwin Cortes rented the Buena safe house under a fictitious name, and paid the rent by money order. In order to begin their surveillance of the apartment, microphones were installed on January 19, 1983, and video equipment was installed soon thereafter.\152\ After only a month of surveillance, agents observed Alejandrina Torres and Edwin Cortes ``cleaning weapons and handling bomb paraphernalia.''\153\ Federal agents secured another warrant to search the apartment. They conducted their search in the middle of the night on March 9, 1983, and found, ``thousands of rounds of ammunition, 24 blasting caps, detonating cord, dynamite, four weapons, false identification and wigs.''\154\ In addition, under the floor of a kitchen cabinet, they found a map of the Leavenworth prison drainage system.\155\ To allow their surveillance to continue, the agents substituted false explosives for the real and disabled the weapons found inside the apartment.\156\

\152\ Rodriguez brief at 8.

\153\ Id.

\154\ Id.

\155\ Id.

\156\ Id.

Like the Buena apartment, the Lunt safe house was rented under a fictitious name, and Alejandrina Torres delivered a money order to pay the rent. At the beginning of April 1983, the government installed microphones and video equipment. When the government searched the Lunt house, agents found bomb accessories, revolvers, and other weapons. Authorities identified the characteristics of the bomb paraphernalia as the signature of the FALN.\157\

\157\ Id. at 9.

b. Plans for prison breaks

At the time the authorities were observing the safe houses, they discovered plans to break out of prison two FALN members who had been convicted in the 1981 Chicago cases, Oscar Lopez and Luis Rosa.\158\ Lopez and Rosa were serving out their sentences at Leavenworth Federal Penitentiary in Kansas and Pontiac State Prison in Illinois, respectively. The first attempt was planned for March 18, 1983, when Oscar Lopez was scheduled to have x rays taken at a veterans' hospital near Leavenworth.\159\ Once they discovered the plans, agents kept constant surveillance on the FALN members. Five days before the scheduled transfer of Lopez, Edwin Cortes picked up a stolen rental car.\160\ The following evening, Cortes, Torres, and another unidentified individual reviewed the layout and security of the veterans' hospital and inspected their guns.\161\ Edwin Cortes was heard on the surveillance tape, ``[y]es, but she [Torres] has to have it loaded and cocked

further back. If they have to shoot, they can shoot.' ' \162\

\158\ Id.
\159\ Id.
\160\ Id.
\161\ Id.
\162\ Id.

When the authorities learned of the plan, they notified the warden at Leavenworth, who canceled Lopez' scheduled transfer.\163\ However, Torres and Cortes, along with the unidentified accomplice, were unaware of the change in plans. On the morning of March 18th, they showed up, in disguises and bulletproof vests, and waited at the entrance to the hospital.\164\ Dejected, they eventually left and drove to an apartment they had rented in Kansas City under a false name.\165\

\163\ Id.
\164\ Id.
\165\ Id.

The next day the trio returned to the Buena safe house and conspired to break Luis Rosa out of the Pontiac prison.\166\ There they studied a copy of the official prison escape response plan. In addition, they went to the trouble of renting an apartment in the town next to the Pontiac prison.\167\ Unfortunately for them, authorities had already notified the warden of the plan.\168\ Luis Rosa was transferred to Joliet State Prison on March 22nd, the same day the apartment was rented.\169\ Surveillance tapes of the Buena safe house made on March 23rd captured Torres and Cortes complaining of changes made the day before.\170\

\166\ Id. at 10.
\167\ Id.
\168\ Id.
\169\ Id.
\170\ Id.

c. Plans to rob the Chicago Transit Authority

Shortly after their failed plans to break their former comrades out of prison, Edwin Cortes and Alberto Rodriguez met several times at the Lunt safe house to discuss a plan to rob a Chicago Transit Authority fare collector.\171\ They discussed which lines would be best to hit, and explored the security and layout of the stops and trains.\172\ At one point, they discussed what to do about the guards, and Alberto Rodriguez suggested that they, ``hit him upside the head'' or that they might have to ``shoot the guard, which makes a noise.' ' \173\ Surveillance indicated that the group had chosen a train stop. Cortes examined the location carefully, and Alberto Rodriguez showed up there several nights later to do the same.\174\ Intending to scare him, a plainclothes team of agents pulled Rodriguez over for questioning.\175\ Indeed, an intercepted phone call from Cortes to Torres told authorities that they had been effective in stopping the plan. Cortes explained that, ``the study we were doing on the train had to be canceled when the police stopped `the comrade' in front of `the place where it was going to be done.' ' ' \176\

\171\ Id.
\172\ Id.
\173\ Id. at 11.
\174\ Id.

\175\ Id.

\176\ Id.

d. The plan to assist FALN fugitive William Morales

Although William Morales had escaped from police custody in 1979 and fled the United States to Mexico, he remained active in the FALN.\177\ According to Morales, he planned the bombings in New York City on New Year's Eve 1983.\178\ In the spring of 1983, Torres and Cortes spoke about the need to find their friend ``Jorge'' a place to live, but worried about the visibility of his disfigured hands.\179\ Authorities soon determined that ``Jorge'' was actually William Morales. By the end of April, Cortes and Torres had plans to move ``Jorge'' out of the country in June.\180\ They actually placed a call to Morales in Mexico, from which authorities were able to trace his location.\181\ Morales told Cortes and Torres to call him back on May 26, 1983, at the same location.\182\ On the designated date, Mexican authorities captured Morales after a gunfight that left a police officer and two of Morales' companions dead.\183\ The day after Morales was arrested, Cortes and Alberto Rodriguez packed up the contents of the Buena safe house, and moved everything to the Lunt safe house.\184\

\177\ Douglas Montero, I Defend My Homeland: William Morales Talks to the Post, N.Y. Post, Sept. 12, 1999, at 5.

\178\ Roberto Santiago, Terrorism American Style: The Guillermo Morales Story, the Plain Dealer, Aug. 1, 1993, at A8. Two of the New York City detectives responding to the bomb threats--Detectives Richard Pastorella and Anthony Senft--testified before the House Committee on Government Reform. Detective Pastorella was blinded by the blast and lost the fingers of his right hand while attempting to render the FALN bomb safe. Detective Senft was blinded in one eye, partially lost his hearing, and underwent five reconstructive surgeries on his face. Clemency for the FALN: A Flawed Decision? Hearing before the Committee on Government Reform, 106th Cong., 1st Sess. (1999).

\179\ Rodriguez brief at 14.

\180\ Id.

\181\ The phone call was made to a coffee shop in Puebla, Mexico, on May 19, 1983. Id.

\182\ Id.

\183\ Morales explained that at the time he was ``ambushed'' by the police, he was waiting for Alejandrina Torres to call from Chicago. Torres was calling from Chicago to double-check plans for bombings in Chicago, New York, and Mexico. Roberto Santiago, Terrorism American Style: The Guillermo Morales Story, the Plain Dealer, Aug. 1, 1993 at A8.

\184\ Rodriguez brief at 14.

e. Plans for bombings

In June 1983, the four FALN members made plans to bomb military facilities in the Chicago area.\185\ They drove to various sites and discussed the layout and suitability of different facilities.\186\ On June 1, 1983, as they discussed the different military targets, Cortes was teaching Alberto Rodriguez how to put together a bomb as they sat around the kitchen table in the Lunt safe house. Cortes told Rodriguez, ``[u]sually we don't show everybody that's in the organization the way this is done . . . this technique. We're the only ones that use it. Nobody else uses this. You have to be careful who we show this.''\187\ On June 28, 1983, Cortes met individually with Torres and Alberto Rodriguez. That day Cortes inventoried the bombmaking accessories located at the safe house.\188\ In addition, Cortes and Torres drafted a communique which stated, ``[w]e warn both governments that failures to respect the human

rights and physical well being will be met with the revolutionary violence of our people.' \189\

\185\ Id. at 15.

\186\ Cortes and Alberto Rodriguez drove to an Army Reserve Center, a Marine base, a GSA building, and two military motor pools. Id.

\187\ Id.

\188\ Id. at 16.

\189\ Id.

Cortes indicated that all was ready for the bombs to be placed. He and Alberto Rodriguez drew maps and diagrams of the targets and prepared the blasting caps and explosives.\190\ Fortunately, they did not get a chance to place the bombs. On June 29, 1983, agents arrested all four FALN members.\191\

\190\ The explosives had been replaced with inert material at the time agents first searched the Buena safe house. Id.

\191\ Id. at 17.

f. The trial

The four FALN members were charged with seditious conspiracy, various weapons charges and conspiring to obstruct commerce by robbery.\192\ Similar to the earlier FALN trial, Torres, Cortes, and Alberto Rodriguez all declared themselves ``prisoners of war.' However, unlike the other members, they did participate in various phases of their trial and even made closing arguments to the jury. The newest recruit to the FALN, Jose Rodriguez, put on a defense.\193\ He sat at a table separate from the others and denied affiliation with the FALN, yet admitted that he supported its tactics and goals.\194\ Torres, Cortes, and Alberto Rodriguez openly admitted that, ``they believed violence was a morally acceptable and legitimate tool and the only one available, to free their homeland from American dominance.' \195\ A jury found all four guilty of at least some of the charges brought against them.\196\

\192\ Exhibit 11--Indictment.

\193\ Paul Galloway, FALN Recipe for Urban Subversion, Chicago Trib., Aug. 8, 1985, at Tempo.

\194\ Id.

\195\ William B. Crawford, Jr., 3 Get 35 Years in Jail for FALN Conspiracy, Chicago Trib., Oct. 5, 1985, at A1, A2.

\196\ Exhibit 18--Memorandum from U.S. Attorney's Office to Probation Office.

4. The Macheteros' activities in Puerto Rico

The Macheteros, a terrorist group whose goal is the independence of Puerto Rico from the United States, literally translates as ``the machete wielders.' The group generally carries out its terrorist activities within Puerto Rico, and the name bespeaks the violence for which they are known.\197\ In testimony before the Senate Select Committee on Intelligence, FBI Director Louis J. Freeh discussed threats to the United States' security, stating that, ``[t]he EPB-Macheteros has been the most active and violent of the Puerto Rican-based terrorist groups since it emerged in 1978.' \198\ The Macheteros finance their operations through robberies, the largest being the September 12, 1983, robbery of Wells Fargo.\199\ During that operation, the Macheteros stole \$7.2 million, the largest armored car robbery at the time.

\197\ Presentence report of Juan Segarra-Palmer, Justice Department production 130052-130100, at 130061.

\198\ Threats to U.S. National Security. Hearing before the Senate Select Committee on Intelligence, 105th Cong., 2d Sess. (1998).

\199\ The FBI found that the Macheteros used the proceeds of several Wells Fargo robberies in Puerto Rico and the Hartford robbery, to finance its activities. George Gombossy, 'Freedom Fighter' a Cuban-Trained Terrorist, FBI Says, Houston Chron., Oct. 25, 1987; presentence report of Juan Segarra-Palmer at 130059-130060.

Authorities in Connecticut, where the robbery occurred, brought indictments against 19 individuals involved in the planning and execution of the robbery, as well as the transportation of the money after the fact.\200\ Several of the individuals involved in the Wells Fargo robbery remain fugitives. Of those individuals convicted, President Clinton offered commutations or remissions of fines to four: Juan Segarra-Palmer, Norman Ramirez-Talavera, Roberto Maldonado-Rivera, and Antonio Camacho-Negron.\201\ The President commuted the sentence of Juan Segarra-Palmer and remitted his fine.\202\ Antonio Camacho Negron reached his mandatory release date and was released from prison under conditions of parole. He refused to abide by those conditions, therefore his parole was revoked.\203\ Because of these circumstances, the President offered only to remit the fine of Antonio Camacho-Negron. Camacho-Negron refused the offer, and remains in prison. The President remitted the fines of the remaining two individuals convicted for their involvement in the Wells Fargo robbery, Norman Ramirez-Talavera and Roberto Maldonado-Rivera.\204\

\200\ Id. at 130054-130057.

\201\ Exhibit 10--President's grant of clemency.

\202\ Id.

\203\ Notice of Action on Appeal, Department of Justice production 003625-003628. (Exhibit 20).

\204\ Exhibit 10--President's grant of clemency.

The first terrorist act for which the Macheteros took credit was the murder of a San Juan policeman in August 1978.\205\ Authorities later determined that the group had robbed at least two banks prior to the murder.\206\ Ultimately, the Macheteros were responsible for a wave of terror in Puerto Rico that left five dead and caused many millions of dollars in damages.

\205\ Luis Feldstein Soto, Puerto Rican Terrorists Taunt FBI, But Agency Is Closing In, Houston Chron., Sept. 15, 1985.

\206\ Listing of Macheteros actions from January 1977 through June 1989. Department of Justice production 102000045-102000046. (Exhibit 21).

Perhaps one of the more violent acts perpetrated by the Macheteros, was the December 1979 attack on a United States Navy bus near Sabana Seca, Puerto Rico, that left 2 dead and 10 wounded.\207\ At the time of the attack, the bus was carrying 18 Navy enlisted personnel to a communications transmitter on the eastern end of Puerto Rico. A Macheteros communique claiming credit for the attack indicated that it was in reprisal for the death of an independentista in a Florida prison.\208\ However, authorities ruled the prison death a suicide after they found the prisoner had hanged himself in his cell. Former Macheteros member Carlos Rodriguez implicated Juan Segarra Palmer, who was granted clemency by the President, in the attack on the Navy bus.\209\ Rodriguez told authorities that he attended a Macheteros meeting in mid-November 1979 at which Segarra made an announcement that the Macheteros would attack a Navy bus.\210\ The group had discussed attacking other

military institutions; however, it dismissed those plans in favor of the Navy bus.\211\ Segarra planned and instructed others on the operation, including the orders to shoot at the bus from a moving vehicle, while blocking the bus with another vehicle.\212\ The Macheteros met 3 weeks after the attack to discuss the operation. During the meeting Segarra evaluated the attack, and commented that ``while the operation had resulted in two dead, he felt the results should have been more severe.'' \213\

\207\ Luis Feldstein Soto, Puerto Rican Terrorists Taunt FBI, But Agency Is Closing In, Houston Chron., Sept. 15, 1985.

\208\ Id.

\209\ Presentence report of Juan Segarra-Palmer at 130079.

\210\ Id.

\211\ Segarra initially wanted to attack the military installation at Sabana Seca, but determined that the fence around the base was too high. Another plan considered was to attack FBI agents, but that too was rejected as ``too hot.'' The group also discussed attacking Fort Buchanan military personnel. That plan was rejected as ``ineffective.'' Id. at 130080.

\212\ The former Machetero, Carlos Rodriguez, indicated that Segarra was supposed to be driving a white van during the attack, yet he did not see Segarra on the scene that day. Id. at 81.

\213\ Id.

The Macheteros continued to use the ambush effectively. In March 1980, the Macheteros attacked and wounded three United States Army officers on their way to the University of Puerto Rico, Rio Pedras Campus, to participate in ROTC activities.\214\ In January 1981, the Macheteros claimed responsibility for the bombing of 11 Air National Guard planes, causing \$45 million in damages.\215\ Segarra, who was granted clemency by the President, implicated himself in the bombing during a conversation with Macheteros leader Filiberto Ojeda Rios:

\214\ Luckily, the three officers escaped with only slight injuries. Exhibit 21--Listing of Macheteros actions; Luis Feldstein Soto, Puerto Rican Terrorists Taunt FBI, But Agency Is Closing In, Houston Chron., Sept. 15, 1985.

\215\ A Machete and a Macheteros flag were left behind at the scene. In addition, the attackers left a videotape of themselves preparing for the bombing--putting on military fatigues and boots. Exhibit 21--Listing of Macheteros actions; Luis Feldstein Soto, Puerto Rican Terrorists Taunt FBI, But Agency Is Closing In, Houston Chron., Sept. 15, 1985.

You know, if, if I had to choose the, the three or four people that are really responsible for the Gaviota happening and, and happening the way it happened, right? Successful and making it happen, I would pick four people. I would say, Frank, okay? I would say you, Jumbo and I.\216\

\216\ ``La Gaviota,' ' which literally translates as seagull, was the codeword for the Macheteros attack at the Air National Guard base. Macheteros literature describes the attack as the ``most overwhelming blow given to the Yankees in `North American territory' since Pearl Harbor and outside its territory since the TET offensive in Vietnam.'' Jumbo, the code name for one of the other individuals referred to by Segarra, was later identified as Orlando Gonzalez Claudio. Frank was the code name for Isaac Camacho Negron. Presentence report of Juan Segarra-Palmer at 130082-130083; Harry Turner, FBI Agent Identifies 3 as Bombers of Air Base, San Juan Star, Sept. 21, 1985, at 3.

In addition, a surveillance tape at the Muniz Air Base captured Segarra and two others on the base the night of the bombing.\217\ In 1985, the Macheteros took responsibility for the ambush attack on Army Major Michael Snyder as he was riding to work the morning of November 6, 1985.\218\ Major Snyder was riding his motor scooter to the base when two men on motorcycles pulled along side him.\219\ One of the men pulled out a gun and shot him twice, seriously wounding Snyder.\220\ In claiming responsibility, the Macheteros explained that the attack was a reprisal for FBI Director William Webster's visit to Puerto Rico 2 days earlier.\221\

\217\ An FBI agent identified the trio, which included Orlando Gonzalez Claudio and Isaac Camacho Negron, from the surveillance tape. Gonzalez and Camacho were also involved in the attack on the Navy bus. Harry Turner, FBI Agent Identifies 3 as Bombers of Air Base, San Juan Star, Sept. 21, 1985, at 3.

\218\ Harold Lidin, U.S. Army Officer Wounded in Ambush in Puerto Rico, the Washington Post, Nov. 7, 1985, at A17.

\219\ Id.

\220\ Id.

\221\ Webster was in Puerto Rico to speak at a judicial conference. ``Picketers at the conference protested alleged FBI brutality in an Aug. 30 roundup of `Los Macheteros' members.'' Id.

The Macheteros have engaged in numerous other violent acts, including more recent attacks. Some of the more violent acts which they carried out were: the ambush of four U.S. Navy personnel in retaliation for an exercise performed by the Navy in 1982, in which one member of the Navy was killed; a 1983 robbery of a Wells Fargo truck in Villa Fontana in which one civilian was killed, and; a 1983 robbery of a Wells Fargo truck at San Roberto, Rio Pedras, Puerto Rico, in which the driver of the Wells Fargo truck was killed.\222\ The Macheteros have also been active recently. On March 31, 1998, they claimed responsibility for the bombing of the supraqueduct at Arecibo, Puerto Rico.\223\ According to a statement by the Macheteros, the attack was in retaliation for ``environmental aggression,' and was ``only the beginning of what from now on will constitute a line of action in defense of our country.'' \224\ The Macheteros also took responsibility for the June 9, 1998, attacks on two branches of the Banco Popular.\225\ The Macheteros set off a bomb at the first branch while they conducted a drive-by shooting of the second branch.\226\ The Macheteros claimed that the attacks were to show support for the telephone company strike.\227\

\222\ Exhibit 21--List of Macheteros actions.

\223\ Recent Macheteros statements/actions. Produced by the Federal Bureau of Investigation, unnumbered. (Exhibit 22).

\224\ On Apr. 21, 1998, Macheteros fugitive Filiberto Ojeda Rios confirmed that the Macheteros were responsible for the bombing on environmental grounds. Id.

\225\ Id.

\226\ Id.

\227\ Id.

5. The Wells Fargo robbery and Macheteros convictions

On August 30, 1985, FBI agents in Puerto Rico arrested 12 people in Puerto Rico and 2 people in the continental United States in connection with the Macheteros 1983 robbery of \$7.2 million from a Wells Fargo armored car in Connecticut.\228\ Over 200 agents served 30 search warrants that day in the investigation of the Macheteros, who earlier had claimed credit

for the robbery.\229\ The FBI indicated that their investigation spanned over 20 months and involved numerous wiretaps on suspects [sic] homes, cars, phones, nearby pay phones, and a motor home.' \230\ Ultimately, indictments were brought in Connecticut against 19 individuals associated with the Macheteros for their respective roles in the conspiracy to rob the armored car and later transport the funds.\231\

\228\ 14 Held in \$7 Million Wells Fargo Robbery, Houston Chron., Aug. 31, 1985, at 1.

\229\ Ron Howell, FBI Roundup Brings Anger in Puerto Rico, Newsday, Dec. 2, 1985.

\230\ Luis Feldstein Soto, Puerto Rican Terrorists Taunt FBI, But Agency Is Closing In, Houston Chron., Sept. 15, 1985 at 1.

\231\ Presentence report of Juan Segarra-Palmer at 130053-130055.

a. The robbery

Prosecutors described the circumstances under which the Wells Fargo robbery in Connecticut took place:

On September 12, 1983, between 9:30 and 11:00 p.m., Wells Fargo guard and co-defendant Victor Manuel Gerena, returned to the Wells Fargo depot in West Hartford, Connecticut after completing his days work, removed a revolver from his co-worker's holster, placed it to his head and tied him up. He then subdued a second employee, hog-tied him, injected both co-workers with a sleep-inducing substance, and fled with more than seven million dollars.\232\

\232\ Id. at 130059-130060.

It was not until October 19, 1984, that the Macheteros took credit for the robbery.\233\ The group waited to issue its communique until all of the money was safely out of the United States and in the Macheteros' possession, 'in a state of maximum security.' \234\ The communique described the robbery as a 'military-economic operative' to earn money for the 'revolutionary movement[.]' \235\ It further explained, 'in the same manner in which we have seized seven million dollars from the very bowels of American imperialism, the organized force of the Puerto Rican people will know how, in its own time to seize the liberty which will allow us to choose our destiny as a people.' \236\ According to the communique, the actual planning and execution of the Wells Fargo robbery took 1 1/2\ years to complete.\237\ Integral in that planning was Juan Segarra-Palmer. Segarra was known as the Macheteros' 'Harvard educated thinker,' who was responsible for much of the planning involved in Macheteros' actions.\238\

\233\ Id. at 130060.

\234\ Quote from the Macheteros communique taking credit for the robbery. Id.

\235\ Id.

\236\ The communique also notes that their, 'comrade Victor Gerena' had done an outstanding job and that he was in good health and integrated into the struggle for Puerto Rican independence. Gerena remains a fugitive. Id.

\237\ Id.

\238\ Segarra's mother described him as exceptionally intelligent from a young age. As a young boy, Segarra approached his parents about attending prep school in Andover, MA, which he did. Segarra later attended Harvard University. He graduated from Harvard in 1972. Id. at 130085, 130092-130093.

During its lengthy investigation, the FBI was able to untangle the connections and roles of all the individuals involved. They began with information they found in a search while investigating a separate Macheteros offense.\239\ In a Macheteros safehouse they found a cache of weapons along with organizational materials describing the manner in which the group was organized, ``safe'' meeting places, storage facilities, training grounds, and workshops.\240\ The documents disclosed that the Macheteros were formed in 1976 with their leader Filiberto Ojeda Rios, and that the group operated through a system of complicated cells.\241\ Armed with that information, the FBI was able to secure wiretaps on the homes of Filiberto Ojeda Rios, his car, three public telephones across the street from Ojeda's residence, the residence of Juan Segarra-Palmer, and the public telephones outside Segarra-Palmer's residence.\242\ Through these sources, authorities learned that Ojeda and Segarra were leaders of the Macheteros and had planned not only the Connecticut Wells Fargo robbery, but numerous other attacks as well.

\239\ The FBI was investigating the 1983 light anti-tank weapon rocket attack on the United States Courthouse and Federal Building in Hato Rey Puerto Rico. Id. at 130061-130063.

\240\ Id. at 130062.

\241\ ``The Macheteros use a system of codenames for individuals, meeting places, meeting times and projects. The Macheteros utilize a system of cells which compartmentalize information so that one cell is not aware of the identities of individuals and projects in other cells.' Id.

\242\ Id.

b. The investigation and indictments

After developing its evidence, the government was able to secure the cooperation of several witnesses who had been close to Segarra and other Macheteros members. Notably, an associate of Segarra's, Kenneth Cox, testified that Segarra told him that he committed the Wells Fargo robbery.\243\ According to Segarra's account to Cox, on the night of the robbery Victor Gerena was taken on a motorcycle from Hartford, CT to Springfield, MA.\244\ Shortly thereafter, Gerena was moved to Boston and ultimately to Mexico while hidden in a secret compartment in a motor home.\245\ The money, which in total weighed 1,150 pounds, was transported in cars to Springfield.\246\ The FBI was able to tie Segarra both to the transfer of Gerena and the money.

\243\ Id. at 130064.

\244\ Id. at 130065.

\245\ Id.

\246\ Id.; George Gombossy, `Freedom Fighter' a Cuban Trained Terrorist, FBI Says, Houston Chron., Oct. 25, 1987, at A1.

A woman who was identified as Segarra's ex-lover, Anne Gassin, also cooperated with the government in its case against the Macheteros.\247\ Gassin stated that Segarra told her, ``his role in the robbery was to time the different escape routes away from the Wells Fargo depot.' '\248\ His primary role thereafter was to get the money out of the United States. Segarra and Ojeda purchased a motor home that they customized with secret compartments to house Victor Gerena and a substantial amount of the stolen money while crossing the border into Mexico.\249\ After his first trip, Segarra made a second trip to Mexico in March 1984. He drove the motor home across the border to Mexico, transporting \$2,024,000 of the stolen cash.\250\ In September 1984, Segarra bought a new motor

home. He and Antonio Camacho-Negron, who was also offered a grant of clemency by the President,\251\ worked to customize it in order to hide cash.\252\ On September 21, 1983, Segarra, Camacho, and a woman from Puerto Rico drove the motor home to Mexico.\253\ On October 19, 1984, with the money safely outside of the United States, the Macheteros claimed responsibility for the robbery.

\247\ Gassin had originally been arrested as part of the conspiracy on Aug. 30, 1985. Id.

\248\ Id.

\249\ Id. at 130067-130068.

\250\ Macheteros documents reflected Segarra's movement of this money. In addition, in an intercept of Filiberto Ojeda Rios' conversation with Segarra, Segarra stated that \$2,024,000 was taken the last time, meaning March 1984. Id. at 130068.

\251\ The President offered to remit Camacho's fine of \$100,000. Camacho refused the offer.

\252\ Segarra had made an earlier attempt to move the rest of the money across the border to Mexico. He had devised a plan to have a non-hispanic couple drive a truck and trailer across the border, and recruited Anne Gassin and another friend, Paul Weinberg, to drive. En route to the Mexican border from Massachusetts, the truck and trailer overturned on the Interstate in Pennsylvania. As a result of the accident, the money had spilled out of the secret compartments. Segarra occupied the Pennsylvania State Police who showed up on the scene of the accident while his colleagues gathered up the money in plastic bags. Id. at 130071-130072; presentence report of Antonio Camacho-Negron, Department of Justice production 140056-140081, at 140064.

\253\ Segarra applied for and received a passport in the name of Ronald Paul Princiotta for the trip. He used the birth certificate of an infant who had died shortly after its birth in 1947. Segarra explained to Anne Gassin that he had used the name in the past. Presentence report of Juan Segarra-Palmer at 130071-130072.

Antonio Camacho Negron's role in the conspiracy was to ``help Segarra conceal the money inside the vehicle.'' \254\ Camacho did, in fact, assist Segarra in building the special panels to hide the money inside the motor home. In addition, Segarra told Anne Gassin that, ``Camacho had done this sort of thing before and was skilled in that type of work.'' \255\ In fact, FBI agents first discovered Camacho and his role in the Macheteros when he was seen at a safe house used by Filiberto Ojeda Rios.\256\ At the time, he was driving a vehicle known as a Macheteros ``safe vehicle.'' \257\ After his identification, FBI agents were able to trace his membership in the Macheteros to July 1984.\258\ Documents seized from the Macheteros bookkeeper provided further information into Camacho's activities. The documents show that ``Roco,'' Camacho's codename, was a full-time member of the Macheteros in December 1984 and was paid a monthly salary of \$600.\259\ In addition, minutes of Macheteros meetings show that ``Roco'' was present when problems during the Wells Fargo robbery were discussed, and actively participated in the conversation.\260\

\254\ Camacho's Macheteros codename was ``Roco,'' and that is how he is referred to in most documents or surveillance recordings. Presentence report of Antonio Camacho-Negron at 140064.

\255\ Id. at 140066.

\256\ Id. at 140067-40068.

\257\ Camacho was pulled over while driving the vehicle. Although Camacho told police that a friend owned it, the vehicle was registered to a woman who told law enforcement that she had never owned the vehicle. In addition, several other known members of the Macheteros had driven the vehicle. Id. at 140068.

\258\ Camacho was photographed on that date exiting the residence of Filiberto Ojeda Rios, along with a co-defendant in the Wells Fargo robbery, Orlando Gonzalez Claudio. Id. at 140069.

\259\ ``Roco'' was also entrusted with large sums of Macheteros money for ``zone 4,'' of which Camacho was a member. Id. at 140072.

\260\ Id. at 140073.

Roberto Maldonado Rivera also participated in the transportation of the Wells Fargo money across the border from the United States to Mexico.\261\ Maldonado was responsible for driving the back-up vehicle as Segarra drove the motor home across the border into Mexico on September 22, 1984.\262\ Macheteros documents showed that Maldonado, whose ``codenames'' were ``Joaquin,'' ``Jan,'' or ``Jean,'' had been affiliated with Filiberto Ojeda Rios and other members of the Macheteros since 1970.\263\ ``A letter sent from the members of `Zone 1' of Los Macheteros to `comrades,' dated April 13, 1985, stated that `Jean' joined the organization in 1977, was expelled in 1978, and rejoined in 1984 giving him a total of two to three years as a member.'' \264\ After rejoining the Macheteros, Maldonado took on significant responsibilities, including membership in the Central Committee, which established Macheteros policies, and the Directive Committee, which implemented those policies.\265\ In 1985, similar to Camacho, Maldonado was a salaried member of the Macheteros, paid \$500 per month.\266\

\261\ Presentence report of Roberto Maldonado Rivera, Department of Justice production 150024-150047, at 150043.

\262\ Segarra had Orlando Gonzalez Claudio drive the back-up vehicle the first time Segarra crossed the border in March 1984. Id. at 150043-150044.

\263\ Id. at 150044.

\264\ Id.

\265\ Id. at 150045.

\266\ Maldonado was the leader of Zone 3. In that capacity he was entrusted to handle large sums of Macheteros money. Id. at 150045-150047.

Norman Ramirez Talavera was an active member of the Macheteros as well. After the robbery, the Macheteros used a small portion of the stolen money to buy toys for Three Kings Day.\267\ Ramirez participated in the toy giveaway funded through the stolen Wells Fargo money.\268\ Ramirez actually purchased about \$5,600 in toys from a ``Toys 'R Us'' in Connecticut, using the Wells Fargo funds.\269\ He also dressed up as a ``King'' to distribute the toys and \$20 bills in Hartford.\270\ Ramirez first came to the attention of the FBI when he was observed traveling frequently with Segarra's wife.\271\ Macheteros documents showed that Ramirez was a salaried member of the Macheteros since June 1980.\272\ However, other records show that Ramirez was a general member in 1978, and was listed under ``Approved Comrades for Military Action'' since July 1979.\273\

\267\ Presentence report of Norman Ramirez Talavera, Department of Justice production 160021-160035, at 160027.

\268\ Id.

\269\ Id.

\270\ Id.

\271\ Segarra's wife, Luz Berrios Berrios, pleaded guilty to charges relating to her role in the Wells Fargo Robbery. Id. at 160025.

\272\ Depending on the amount of money available, Ramirez earned between \$268 and \$500 per month. Id. at 160025-160026.

\273\ Id. at 160025.

c. The trials and convictions

After he was found guilty by a jury, Juan Segarra-Palmer submitted a statement regarding his actions in the Wells Fargo robbery:

I planned and organized the receipt and transportation of the money after it was taken from the Wells Fargo depot and the subsequent toy giveaways in Hartford and Puerto Rico on January 6, 1985. I consider my acts part of the struggle against colonialism and for the self-determination of Puerto Rico and therefore political offenses, not crimes. . . .\274\

\274\ Presentence report of Juan Segarra-Palmer at 130090.

Segarra did not acknowledge that he had prior knowledge, and in fact planned the Wells Fargo robbery. The judge and jury found differently, and Segarra was sentenced to 65 years in prison and given a \$500,000 fine. President Clinton offered both to commute his sentence and remit his fine. Segarra accepted the President's offer, although under the conditions of clemency, he continues to serve some portion of his sentence.

Antonio Camacho-Negron, represented by court appointed counsel, pleaded not guilty to the charges leveled in the Connecticut indictment.\275\ During his trial, Camacho was asked about the violent activities associated with the Macheteros, in particular the attack on the U.S. Navy bus. Camacho responded, ``[c]an anyone condemn David for hitting Goliath with a stone?'' \276\ Camacho refused to cooperate with the Probation Office, indicating that it was a representative of the Government.\277\ The Probation Office provided an assessment of Camacho:

\275\ Presentence report of Antonio Camacho-Negron at 140076.
\276\ Id. at 140074.
\277\ Id. at 140077.

First and foremost, it is this officer's opinion that Mr. Camacho-Negron exhibits the most fanatical demeanor of all of the codefendants [sic] interviewed by this officer to date. He indulges in florid rhetoric and enjoys hearing himself talk. He appears downright obsessive about his present circumstances and is probably extremely hostile and aggressive under his superficial courteous demeanor.\278\

\278\ Id. at 140081.

After serving out his sentence until the mandatory release date, Camacho was released on parole in February 1998.\279\ He was subject to the same terms of release as all other prisoners in his situation would be. However, Camacho returned to Puerto Rico and purposefully violated the terms of his parole. Attorneys for Camacho wrote to the Probation office to let the office know that Camacho was ``not available at the moment.''\280\ His attorneys attempted to make the argument that he should not be subject to the same rules as all other prisoners on mandatory release:

\279\ Sentence monitoring computation data for Antonio Camacho-Negron, Department of Justice production 140037.

\280\ Letter from Luis Nieves Falcon, Comite Pro Derechos Humanos en Puerto Rico, to Eustaquio Babilonia, United States Probation Office, Deputy Chief (Feb. 19, 1998). (Exhibit 23).

Because of his sincere and strongly held political beliefs, he feels he cannot comply with to [sic] onerous supervision conditions imposed upon him after 10 years of incarceration. To require him to comply with those conditions is an interference with his rights to political and personal freedom in violation of prevailing human rights [sic]. If he has to choose between his political beliefs and his personal dignity or complying with your conditions he chooses the first and rather reenter prison [sic].\281\

\281\ Id.

Camacho-Negron did re-enter prison after his mandatory release was revoked for failure to comply with the terms and conditions of parole.\282\ Camacho was not offered a commutation of sentence by President Clinton, rather he was granted a remission of fine, which he refused. Camacho is free to gain release from prison at any time if he is willing to comply with parole conditions.\283\

\282\ Notice of action on appeal for Antonio Camacho-Negron, Department of Justice production 015482. (Exhibit 24).

\283\ Id.

Roberto Maldonado Rivera, an attorney, represented himself during his trial. After he was found guilty of the conspiracy,

he submitted a written statement to the Probation Office:

My theory of the case rests on the knowledge that I believe I am being persecuted by the government of the United States for my work in human and civil rights for the past two decades in Puerto Rico. I had nothing to do with the Wells Fargo robbery and I believe there is no evidence linking me in any way to a conspiracy in said case.\284\

\284\ Presentence report of Roberto Maldonado-Rivera at 150029.

Maldonado steadfastly maintained his innocence both before and after the trial. However, he did state that he was an ``ardent independist'' and that ``he viewed the conflict between Puerto Rico and the United States in a similar fashion as a revolutionary war between the original thirteen colonies and their mother country, England.'' \285\ In addition, he stated that he ``does not condemn any violent actions in the pursuit of independence.'' \286\

\285\ Id. at 150029-150030.

\286\ Id. at 150030.

Ramirez was arrested in Puerto Rico, along with 15 other members of the Macheteros, on August 30, 1985. Prior to his arrest he was overheard in a conversation stating that he ``would never be arrested. Have I told you?'' He added that he would not permit anyone to ``take him abroad [to the mainland United States] . . . they will have to take me dead. I won't be caught alive. I couldn't stand being out there.'' \287\
Ramirez, represented by an attorney, pleaded not guilty to the charges brought against him. However, he refused to provide any statement or information to the Probation Office.\288\
He was sentenced to 5 years in prison and released on parole in April 1994.\289\
President Clinton offered to remit the balance of

his fine, which Ramirez accepted.

 \287\ Presentence report of Norman Ramirez Talavera at 160027.
 \288\ Id. at 160028-160029.
 \289\ Certificate of Parole for Norman Ramirez Talavera, Department
 of Justice production 006073.

b. the sentences of the 16 offered clemency

The following section reviews the counts, crimes, maximum penalties, and sentences of the 16 members of the FALN offered clemency by President Clinton on August 11, 1999. A variety of documents produced to the Committee by the Department of Justice in response to the Committee's September 1, 1999, subpoena were sources of information for this summary. Documents include the August 11, 1999, executive grant of clemency, judgment and commitment orders prepared by the courts, presentence reports prepared by probation officers, and progress reports prepared by the Bureau of Prisons. The U.S. Code sections listed for each criminal count are as listed in President Clinton's August 11, 1999, executive grant of clemency.

1. Elizam Escobar

Elizam Escobar was convicted of seven criminal counts on February 11, 1981, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$50,000 fine and/or a maximum of 80 years in prison. Escobar was sentenced to a 60-year term of imprisonment on February 18, 1981. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Interference with Interstate Commerce by Threats or Violence.	18 U.S.C. Sec. 1951 and 18 U.S.C. Sec. 2.	20
3--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d) and 18 U.S.C. Sec. 2.	10
4--Carrying Firearms During the Commission of Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(c)(2).	10
9--Interstate Transportation of Firearms with Intent to Commit Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(b) and 18 U.S.C. Sec. 2.	10
10--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
13--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5

The total effective 60-year sentence was determined by consecutive and/or concurrent sentences for the individual counts. Counts 1, 2, 10, and 13 were to run consecutively. Counts 3, 4, and 9 were to run concurrently with each other and consecutively to all other counts.

On August 26, 1980, Escobar began serving an Illinois State sentence for conspiracy to commit armed robbery (3 years), unlawful use of a shotgun (5 years consecutive), and unlawful

use of a loaded handgun (364 days concurrent). He was confined at the Illinois State Penitentiary until he was remanded into Federal custody on January 31, 1981. Escobar's Federal sentence was to run consecutively to the 8-year sentence imposed in the Illinois State Court.

2. Ricardo Jimenez

Ricardo Jimenez was convicted of nine criminal counts on February 11, 1981, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$60,000 fine and/or a maximum of 90 years in prison. Jimenez was sentenced to a 90-year term of imprisonment on February 18, 1981. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Interference with Interstate Commerce by Threats or Violence.	18 U.S.C. Sec. 1951 and 18 U.S.C. Sec. 2.	20
3--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d) and 18 U.S.C. Sec. 2.	10
4--Carrying Firearms During the Commission of Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(c)(2).	10
9--Interstate Transportation of Firearms with Intent to Commit Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(b) and 18 U.S.C. Sec. 2.	10
10--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
11--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
12--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
13--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5

All counts of the total effective 90-year sentence were to run consecutively.

On August 26, 1980, Jimenez began serving an Illinois State sentence for conspiracy to commit armed robbery (3 years), unlawful use of a shotgun (5 years consecutive), and unlawful use of a loaded handgun (364 days concurrent). He was confined at the Illinois State Penitentiary until he was remanded into Federal custody on January 31, 1981. Jimenez' Federal sentence was to run consecutively to the 8-year sentence imposed in the Illinois State Court.

3. Adolfo Matos

Adolfo Matos was convicted of nine criminal counts on February 11, 1981, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$60,000 fine and/or a maximum of 90 years in prison. Matos was sentenced to a 70-year term of imprisonment on February 18, 1981. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Interference with Interstate	18 U.S.C. Sec. 1951	20

Commerce by Threats or Violence.	and 18 U.S.C. Sec. 2.	
3--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d)	10
	and 18 U.S.C. Sec. 2.	
4--Carrying Firearms During the Commission of Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(c)(2).	10
9--Interstate Transportation of Firearms with Intent to Commit Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(b)	10
	and 18 U.S.C. Sec. 2.	
10--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312	5
	and 18 U.S.C. Sec. 2.	
11--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312	5
	and 18 U.S.C. Sec. 2.	
12--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312	5
	and 18 U.S.C. Sec. 2.	
13--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312	5
	and 18 U.S.C. Sec. 2.	

The total effective 70-year sentence was determined by consecutive and/or concurrent sentences for the individual counts. Counts 1, 2, 10, 11, 12, and 13 were to run consecutively. Counts 3, 4, and 9 were to run concurrently with each other and consecutively to all other counts.

On August 26, 1980, Matos began serving an Illinois State sentence for conspiracy to commit armed robbery (3 years), unlawful use of a shotgun (5 years consecutive), and unlawful use of a loaded handgun (364 days concurrent). He was confined at the Illinois State Penitentiary until he was remanded into Federal custody on January 31, 1981. Matos' Federal sentence was to run consecutively to the 8-year sentence imposed in the Illinois State Court.

4. Dylcia Noemi Pagan

Dylcia Noemi Pagan was convicted of nine criminal counts on February 11, 1981, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$60,000 fine and/or a maximum of 90 years in prison. Pagan was sentenced to a 55-year term of imprisonment on February 18, 1981. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Interference with Interstate Commerce by Threats or Violence.	18 U.S.C. Sec. 1951	20
	and 18 U.S.C. Sec. 2.	
3--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d)	10
	and 18 U.S.C. Sec. 2.	
4--Carrying Firearms During the Commission of Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(c)(2).	10
9--Interstate Transportation of Firearms with Intent to Commit Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(b)	10
	and 18 U.S.C. Sec. 2.	
10--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312	5
	and 18 U.S.C. Sec. 2.	
11--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312	5
	and 18 U.S.C. Sec. 2.	

12--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
13--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5

The total effective 55-year sentence was determined by consecutive and/or concurrent sentences for the individual counts. Counts 1 and 2 were to run consecutively. Counts 3, 4, and 9 were to run concurrently with each other and consecutively to all other counts. Counts 10, 11, 12, and 13 were to run concurrently with each other and consecutively to all other counts.

On August 26, 1980, Pagan began serving an Illinois State sentence for conspiracy to commit armed robbery (3 years), unlawful use of a shotgun (5 years consecutive), and unlawful use of a loaded handgun (364 days concurrent). She was confined at the Illinois State Penitentiary until she was remanded into Federal custody on January 31, 1981. Pagan's Federal sentence was to run consecutively to the 8-year sentence imposed in the Illinois State Court.

5. Alicia Rodriguez

Alicia Rodriguez was convicted of nine criminal counts on February 11, 1981, in the U.S. District Court for the Northern District of Illinois. Rodriguez was sentenced to a 55-year term of imprisonment on February 18, 1981. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Interference with Interstate Commerce by Threats or Violence.	18 U.S.C. Sec. 1951 and 18 U.S.C. Sec. 2.	20
3--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d) and 18 U.S.C. Sec. 2.	10
6--Carrying Firearms During the Commission of Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(c)(2).	10
9--Interstate Transportation of Firearms with Intent to Commit Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(b) and 18 U.S.C. Sec. 2.	10
10--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
11--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
12--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
13--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5

The total effective 55-year sentence was determined by consecutive and/or concurrent sentences for the individual counts. Counts 1 and 2 were to run consecutively. Counts 3, 6, and 9 were to run concurrently with each other and consecutively to all other counts. Counts 10, 11, 12, and 13 were to run concurrently with each other and consecutively to all other counts.

6. Ida Luz Rodriguez

Ida Luz Rodriguez was convicted of nine criminal counts on

February 11, 1981, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$60,000 fine and/or a maximum of 90 years in prison. Rodriguez was sentenced to a 75-year term of imprisonment on February 18, 1981. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Interference with Interstate Commerce by Threats or Violence.	18 U.S.C. Sec. 1951 and 18 U.S.C. Sec. 2.	20
3--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d) and 18 U.S.C. Sec. 2.	10
7--Carrying Firearms During the Commission of Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(c)(2).	10
9--Interstate Transportation of Firearms with Intent to Commit Seditious Conspiracy and Interference with Interstate Commerce By Violence.	18 U.S.C. Sec. 924(b) and 18 U.S.C. Sec. 2.	10
10--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
11--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312...	5
12--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312...	5
13--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312...	5

The total effective 75-year sentence was determined by consecutive and/or concurrent sentences for the individual counts. Counts 1, 2, 3, 7, and 9 were to run consecutively. Counts 10, 11, 12, and 13 were to run concurrently with each other and consecutively to the other counts.

On August 26, 1980, Rodriguez began serving an Illinois State sentence for conspiracy to commit armed robbery (3 years), unlawful use of a shotgun (5 years consecutive), and unlawful use of a loaded handgun (364 days concurrent). She was confined at the Illinois State Penitentiary until she was reformed into Federal custody on January 31, 1981. Rodriguez' Federal sentence was to run consecutively to the 8-year sentence imposed in the Illinois State Court.

7. Luis Rosa

Luis Rosa was convicted of nine criminal counts on February 11, 1981, in the U.S. District Court for the Northern District of Illinois. Rosa was sentenced to a 75-year term of imprisonment on February 18, 1981. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Interference with Interstate Commerce by Threats or Violence.	18 U.S.C. Sec. 1951 and 18 U.S.C. Sec. 2.	20
3--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d) and 18 U.S.C. Sec. 2.	10
5--Carrying Firearms During the Commission of Seditious Conspiracy	18 U.S.C. Sec. 924(c)(2).	10

and Interference with Interstate
Commerce by Violence.

9--Interstate Transportation of Firearms with Intent to Commit Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(b) and 18 U.S.C. Sec. 2.	10
10--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
11--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
12--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
13--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5

The total effective 75-year sentence was determined by consecutive and/or concurrent sentences for the individual counts. Counts 1, 2, 3, 5, and 9 were to run consecutively. Counts 10, 11, 12, and 13 were to run concurrently with each other and consecutively to all other counts.

8. Carmen Valentin

Carmen Valentin was convicted of nine criminal counts on February 11, 1981, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$60,000 fine and/or a maximum of 90 years in prison. Valentin was sentenced to a 90-year term of imprisonment on February 18, 1981. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Interference with Interstate Commerce by Threats or Violence.	18 U.S.C. Sec. 1951 and 18 U.S.C. Sec. 2.	20
3--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d) and 18 U.S.C. Sec. 2.	10
8--Carrying Firearms During the Commission of Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(c)(2).	10
9--Interstate Transportation of Firearms with Intent to Commit Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(b) and 18 U.S.C. Sec. 2.	10
10--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
11--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
12--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
13--Interstate Transportation of Stolen Motor Vehicles.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5

All counts of the total effective 90-year sentence were to run consecutively.

On August 26, 1980, Valentin began serving an Illinois State sentence for conspiracy to commit armed robbery (3 years), unlawful use of a shotgun (5 years consecutive), and unlawful use of a loaded handgun (364 days concurrent). She was confined at the Illinois State Penitentiary until she was

remanded into Federal custody on January 31, 1981. Valentin's Federal sentence was to run consecutively to the 8 year sentence imposed in the Illinois State Court.

9. Alberto Rodriguez

Alberto Rodriguez was convicted of five criminal counts on August 5, 1985, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$60,000 fine and/or a maximum of 65 years in prison. On October 4, 1985, Rodriguez was sentenced to a 35-year term of imprisonment followed by 5 years of probation. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
4--Conspiracy to Make Destructive Devices.	18 U.S.C. Sec. 371....	5
6--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d)	10
7--Possession of a Firearm without a Serial Number.	26 U.S.C. Sec. 5861(i)	10
8--Conspiracy to Obstruct Interstate Commerce by Robbery.	18 U.S.C. Sec. 1951...	20

The total effective 35-year sentence followed by 5 years of probation was determined by consecutive and/or suspended sentences for the individual counts. Counts 1, 4, and 6 were to run consecutively. Counts 7 and 8 were suspended. Five years of probation were to follow Rodriguez' release from custody.

10. Alejandrina Torres

Alejandrina Torres was convicted of seven criminal counts on August 5, 1985, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$66,000 fine and/or a maximum of 61 years in prison. On October 4, 1985, Torres was sentenced to a 35-year term of imprisonment followed by 5 years of probation. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d)	10
3--Unlawful Storage of Explosives...	18 U.S.C. Sec. 842(j).	1
4--Conspiracy to Make Destructive Devices.	18 U.S.C. Sec. 371....	5
5--Interstate Transportation of a Stolen Vehicle.	18 U.S.C. Sec. 2312...	5
6--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d)	10
7--Possession of a Firearm without a Serial Number.	26 U.S.C. Sec. 5861(i)	10

The total effective 35-year sentence followed by 5 years of probation was determined by consecutive, concurrent, and/or suspended sentences for the individual counts. Counts 1 and 4 were to run consecutively. Counts 2, 6, and 7 were to run concurrently with each other and consecutively to all other counts. Counts 3 and 5 were suspended. Five years of probation

were to follow Torres' release from custody.

11. Edwin Cortes

Edwin Cortes was convicted of eight criminal counts on August 5, 1985, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$76,000 fine and/or a maximum of 81 years in prison. On October 4, 1985, Cortes was sentenced to a 35-year term of imprisonment followed by 5 years of probation. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d)	10
3--Unlawful Storage of Explosives...	18 U.S.C. Sec. 842(j).	1
4--Conspiracy to Make Destructive Devices.	18 U.S.C. Sec. 371....	5
5--Interstate Transportation of a Stolen Vehicle.	18 U.S.C. Sec. 2312...	5
6--Possession of an Unregistered Firearm.	26 U.S.C. Sec. 5861(d)	10
7--Possession of a Firearm without a Serial Number.	26 U.S.C. Sec. 5861(i)	10
8--Conspiracy to Obstruct Interstate Commerce by Robbery.	18 U.S.C. Sec. 1951...	20

The total effective 35-year sentence followed by 5 years of probation was determined by consecutive, concurrent, and/or suspended sentences for the individual counts. Counts 1 and 4 were to run consecutively. Counts 2 and 6 were to run concurrently with each other and consecutively to the other counts. Counts 3, 5, 7, and 8 were suspended. Five years of probation were to follow Cortes' release from custody.

12. Oscar Lopez

Oscar Lopez was initially convicted of seven criminal counts on July 24, 1981, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$50,000 fine and/or a maximum of 70 years in prison. Lopez was sentenced to a 55-year term of imprisonment on August 11, 1981. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Seditious Conspiracy.....	18 U.S.C. Sec. 2384...	20
2--Interference with Interstate Commerce by Threats or Violence.	18 U.S.C. Sec. 1951 and 18 U.S.C. Sec. 2.	20
9--Carrying Firearms During the Commission of Seditious Conspiracy and Interference with Interstate Commerce by Violence.	18 U.S.C. Sec. 924(b) and 18 U.S.C. Sec. 2.	10
10--Interstate Transportation of a Stolen Vehicle.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
11--Interstate Transportation of a Stolen Vehicle.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
12--Interstate Transportation of a Stolen Vehicle.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5
13--Interstate Transportation of a Stolen Vehicle.	18 U.S.C. Sec. 2312 and 18 U.S.C. Sec. 2.	5

The 55-year sentence was determined by consecutive and/or concurrent sentences for the individual counts. Counts 1, 2, and 9 were to run consecutively. Counts 10, 11, 12, and 13 were to run concurrently with each other and consecutively to the other counts.

While serving the 55-year sentence, Oscar Lopez participated in a conspiracy to escape from the U.S. Penitentiary at Leavenworth, Kansas where he was incarcerated. Mr. Lopez was convicted of five criminal counts on December 31, 1987, in the U.S. District Court for the Northern District of Illinois. The maximum penalty for these crimes was a \$500,000 fine and/or a maximum of 25 years in prison. Lopez was sentenced to a 15-year term of imprisonment on February 26, 1988. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Conspiracy to Escape.....	18 U.S.C. Sec. 371....	5
2--Transport of Explosives.....	18 U.S.C. Sec. 1952(a)(3) and 18 U.S.C. Sec. 2.	5
3--Transport of Explosives.....	18 U.S.C. Sec. 1952(a)(3) and 18 U.S.C. Sec. 2.	5
7--Transport of Explosives.....	18 U.S.C. Sec. 1952(a)(3) and 18 U.S.C. Sec. 2.	5
8--Transport of Explosives.....	18 U.S.C. Sec. 1952(a)(3) and 18 U.S.C. Sec. 2.	5

The specific crimes surrounding counts 2, 3, 7, and 8 include the transportation of explosives with intent to kill and injure people, and to destroy government buildings and property; aiding and abetting travel in interstate commerce to carry on arson; and using a telephone to carry on arson. This 15-year sentence was determined by consecutive and/or concurrent sentences for the individual counts. Count 1 was to run consecutively to all other counts. Counts 2 and 3 were to run concurrently with each other and consecutively to all other counts. Counts 7 and 8 were to run concurrently with each other and consecutively to all other counts.

The entire 15-year sentence was to run consecutively to the 55-year sentence previously imposed on August 11, 1981, resulting in a total effective sentence of a 70-year term of imprisonment.

13. Juan Enrique Segarra-Palmer III

Juan Enrique Segarra-Palmer was initially convicted of 11 criminal counts on April 4, 1989, in the U.S. District Court for the District of Connecticut. The maximum penalty for these crimes was a \$565,000 fine and/or a maximum of 165 years in prison. On June 15, 1989, Segarra-Palmer was sentenced to a 65-year term of imprisonment and ordered to pay a \$500,000 fine. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
1--Robbery of Federally Insured Bank	18 U.S.C. Sec. 2113(a)	20

Funds.			
3--Robbery of Federally Insured Bank	18 U.S.C. Sec. 2113(a)		20
Funds.			
5--Robbery of Federally Insured Bank	18 U.S.C. Sec. 2113(a)		20
Funds.			
7--Robbery of Federally Insured Bank	18 U.S.C. Sec. 2113(a)		20
Funds.			
9--Theft from Interstate Shipment...	18 U.S.C. Sec. 659...		10
10--Interstate Transportation of	18 U.S.C. Sec. 2314...		10
Stolen Money.			
12--Foreign Transportation of Stolen	18 U.S.C. Sec. 2314...		10
Money.			
13--Foreign Transportation of Stolen	18 U.S.C. Sec. 2314...		10
Money.			
14--Conspiracy to Interfere with	18 U.S.C. Sec. 1951...	20	
Commerce by Robbery.		\$250,000	
15--Conspiracy to Interfere with	18 U.S.C. Sec. 1951...	20	
Commerce by Robbery.			
16--Conspiracy to Rob Federally	18 U.S.C. Sec. 371....	5	
Insured Bank Funds, to Commit a		\$250,000	
Theft from Interstate Shipment, and			
to Transport Stolen Money in			
Interstate and Foreign Commerce.			

The total effective 65-year sentence was determined by consecutive, concurrent, and/or suspended sentences for the individual counts. Counts 1, 3, 5, and 7 were to run concurrently with each other and consecutively to all counts. Counts 9 and 16 were to run consecutively to all counts. Counts 10, 12, and 13 were to run concurrently with each other and consecutively to all counts. Counts 14 and 15 were to run concurrently with each other and consecutively to all counts. Additionally, counts 14 and 16 each carried a \$250,000 fine.

On March 15, 1990, the U.S. Court of Appeals held that Segarra-Palmer's conviction under count 9, 18 U.S.C. Sec. 659, was similar to his conviction under count 12, 18 U.S.C. Sec. 1951. United States v. Rivera, 922 F.2d 934, 982 (2d Cir. 1990). Because both of these ``counts of theft from interstate commerce focus on precisely the same conduct . . . [they] are multiplicitious.'' Id. Therefore, the court ordered that count 9 of the above sentence be vacated. With this modification, Segarra-Palmer's total effective sentence was reduced to a 55-year term of imprisonment, while the original \$500,000 fine remained imposed as previously ordered.

14. Antonio Camacho-Negron

Antonio Camacho-Negron was convicted of two criminal counts on April 10, 1989, in the U.S. District Court for the District of Connecticut. The maximum penalty for these crimes was a \$260,000 fine and/or a maximum of 15 years in prison. Camacho-Negron was sentenced to a 15-year term of imprisonment and fined \$100,000 on June 8, 1989. The specific criminal counts are as follows:

Count and crime	Statute	Sentence (years)
13--Foreign Transportation of Stolen Money.	18 U.S.C. Sec. 2314 and 18 U.S.C. Sec. 2.	10
16--Conspiracy to Rob Federally Insured Bank Funds, Commit a Theft from Interstate Shipment, and Transport Stolen Money in Interstate and Foreign Commerce.	18 U.S.C. Sec. 371, 18 U.S.C. Sec. 2314, and 18 U.S.C. Sec. 659.	5 \$100,000

The terms of counts 13 and 16 were to run consecutive for a total effective sentence of a 15-year term of imprisonment and a \$100,000 fine.

Following his February 13, 1998, mandatory release on parole, Camacho-Negron failed to report for supervision as required under 18 U.S.C. Sec. 4164. The U.S. Department of Justice's Parole Commission (the Commission) found that Camacho-Negron's unwillingness to comply with this parole requirement, a decision that generated considerable publicity, was based on ideological grounds. As a result, on April 14, 1999, the National Appeals Board upheld the Commission's decision to revoke Camacho-Negron's mandatory release and return him to prison. Until the Commission receives reasonable indication that Camacho-Negron is willing to comply with conditions of parole, he is unable to gain release from prison. Additionally, because time spent on mandatory release will not be credited toward time served, Camacho-Negron's full jail term expires on May 21, 2004.

15. Roberto Maldonado-Rivera

Roberto Maldonado-Rivera was convicted of one criminal count on April 10, 1989, in the U.S. District Court for the District of Connecticut. The maximum penalty for this crime was a \$250,000 fine and/or a maximum of 5 years in prison. Maldonado-Rivera was sentenced to a 5-year term of imprisonment and fined \$100,000 on June 8, 1989. The specific criminal count is as follows:

Count and crime	Statute	Sentence (years)
16--Conspiracy to Rob Federally Insured Bank Funds, Commit a Theft from Interstate Shipment, and Transport Stolen Money in Interstate and Foreign Commerce.	18 U.S.C. Sec. 371, 18 U.S.C. Sec. 2314, and 18 U.S.C. Sec. 659.	5 \$100,000

16. Norman Ramirez-Talavera

Norman Ramirez-Talavera was convicted of one criminal count on April 10, 1989, in the U.S. District Court for the District of Connecticut. The maximum penalty for this crime was a \$250,000 fine and/or a maximum of 5 years in prison. Ramirez-Talavera was sentenced to a 5-year term of imprisonment and fined \$50,000 on June 8, 1989. The specific criminal count is as follows:

Count and crime	Statute	Sentence (years)
16--Conspiracy to Rob Federally Insured Bank Funds, Commit a Theft from Interstate Shipment, and Transport Stolen Money in Interstate and Foreign Commerce.	18 U.S.C. Sec. 371, 18 U.S.C. Sec. 2314, and 18 U.S.C. Sec. 659.	5 \$50,000

III. The Clemency Process and Decision

On August 11, 1999, the President granted clemency to 16 individuals who were members of the Puerto Rican terrorist groups the FALN and the Macheteros. Thirteen of these

individuals were offered commutations of their sentences, while four were offered remissions of their fines.\290\ The decision to grant clemency to these individuals convicted of terrorist acts took over 6 years to make. Although the clemency process is normally lengthy, the process for these individuals not only was drawn out, but also was handled in a manner different than the average petition. This suggests that the decision was subject to numerous political considerations. However, because President Clinton claimed executive privilege over all documents that might shed light on the reasons for the clemency, the public does not know all of the facts.

\290\ Juan Segarra-Palmer was offered both a commutation of sentence and remission of fine. Exhibit 10--President's grant of executive clemency.

a. how the clemency process works

Since his election in 1993, President Clinton has received over 1,300 requests for pardon and over 3,000 requests for commutation.\291\ In order to process the requests, the Department of Justice established the Office of the Pardon Attorney ('OPA'), under the direction of the Deputy Attorney General.\292\ The major functions of the Office of the Pardon Attorney are to:

\291\ Presidential Clemency Actions by Administration: 1945 to Present. Produced by the Office of the Pardon Attorney, Department of Justice (unnumbered) (Exhibit 25).

\292\ The Office of the Pardon Attorney dates back to an Executive order of Mar. 3, 1865. U.S. Attorneys Manual (Revised 1996), Department of Justice production 1040125-1040131. (Exhibit 26).

Receive and review all petitions for executive clemency, conduct the necessary investigations and prepare recommendations to the President for action.

Provide policy guidance for the conduct of clemency proceedings and the standards for decision.

Confer with individual clemency applicants, their representatives, public groups, Members of Congress, various Federal, State, and local officials and others in connection with the disposition of clemency proceedings.

Participate in training and other conferences related to the field of criminal justice, corrections and clemency, and maintain the contacts required of OPA with Department of Justice officials, the Counsel to the President, and other Government officials.\293\

\293\ Department of Justice Organization, Mission and Functions Manual. Department of Justice production 1040578.

In carrying out its mandate, OPA has developed rules and regulations for the application and review of clemency requests.

1. Procedures for commutation

The rules governing petitions for executive clemency are published in the Code of Federal Regulations.\294\ The first rule states, '[a] person seeking executive clemency by pardon, reprieve, commutation of sentence or remission of fine shall execute a formal petition.' \295\ The rule requires that the person seeking the remedy personally request such remedy. This

rule is to ensure that the individual requesting clemency actually wants such relief and that the individual would accept such relief.\296\ Petitioners address the request to the President, the only person who is able to deliver the remedy, but submit it to OPA. The Pardon Attorney then initiates and conducts the investigations relating to clemency petitions, and ultimately prepares a report and recommendation for submission to the President.\297\

\294\ The rules are also published in a form that any layperson would understand and are available at Federal correctional institutions and penitentiaries. 28 C.F.R. Sec. 1.1 et. seq. (Exhibit 27--Code of Federal Regulations); (Exhibit 28--Information and Instructions on Pardons).

\295\ 28 C.F.R. Sec. 1.1.

\296\ Memorandum from Margaret Colgate Love, Pardon Attorney, to Philip B. Heymann, Deputy Attorney General, July 29, 1993. Department of Justice production 1041252-1041253.

\297\ Exhibit 26--U.S. Attorneys Manual.

In the case of a commutation of sentence, the Pardon Attorney gathers information and opinions from parties who have knowledge of the petitioner's crimes and convictions, as well as the petitioner's behavior or status since incarceration in order to prepare his report.\298\ Generally, OPA requests several items from the Bureau of Prisons, including: a presentence report, sentence computation record, sentence data summary, and progress report.\299\ A presentence report is prepared for the judge in anticipation of sentencing.\300\ It is especially useful because it is a contemporaneous account of the conviction and the petitioner's conduct leading to the conviction. In contrast, a progress report is an internal Bureau of Prisons report that is prepared periodically and outlines the prisoner's conduct while incarcerated.\301\ Although the Bureau of Prisons provides this information to OPA, it does not generally give an opinion on whether clemency should be granted.

\298\ Chart on processing a commutation petition produced by Office of the Pardon Attorney. (Exhibit 29).

\299\ Interview with Roger Adams, Pardon Attorney, U.S. Department of Justice (Sept. 18, 1999).

\300\ Id.

\301\ Id.

In certain cases, OPA also will request information from the Office of the U.S. Attorney that prosecuted the case.\302\ Unlike the Bureau of Prisons, the U.S. Attorney is asked for his recommendation. According to the U.S. Attorneys Manual:

\302\ Exhibit 26--U.S. Attorneys Manual.

The U.S. Attorney can contribute significantly to the clemency process by providing factual information and perspectives about the offense of conviction that may not be reflected in the presentence or background investigation reports or other sources, e.g., the extent of the petitioner's wrongdoing and the attendant circumstances, the amount of money involved or losses sustained, the petitioner's involvement in other criminal activity, the petitioner's reputation in the community and, when appropriate, the victim impact of the petitioner's crime.\303\

\303\ Id.

The U.S. Attorney may ``support, oppose or take no position on a pardon request.'' \304\ In addition, the U.S. Attorney is asked to contact the sentencing judge in order to solicit his recommendation on the clemency petition. Once collected, the two recommendations are sent to OPA.

\304\ Id.

After the Pardon Attorney has gathered all of the relevant information relating to the petitioner, he drafts a proposed recommendation for action, which is sent to the Deputy Attorney General for review, and action.\305\ Such a recommendation is supposed to reflect the views of the Department of Justice.\306\ If the Deputy Attorney General concurs with the Pardon Attorney's recommendation, he will sign the recommendation and return it to OPA for transmittal to the Counsel to the President. Should the Deputy Attorney General disagree with the recommendation, he may send it back to OPA to change the proposed recommendation.\307\

\305\ Exhibit 29--Commutation process chart.

\306\ The Executive Clemency Process, Department of Justice production 1040586-1040591, at 1040586.

\307\ Id. at 1040588.

Once the Deputy Attorney General has approved the recommendation, it is transmitted to the Counsel to the President. Ostensibly, the Counsel to the President uses the Department of Justice's report as the basis for his recommendation to the President. It is then solely the President's decision on whether or not to grant clemency.

2. Standards for considering commutation

Rather than forgiving the underlying offense, a commutation reduces the period of incarceration. ``A commutation of sentence is an extraordinary remedy that is rarely granted.'' \308\ The following factors have traditionally been considered appropriate grounds for considering commutation: ``disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, e.g., cooperation with investigative or prosecutive efforts that has not been adequately rewarded by other official action.'' \309\ In addition, OPA takes into account the ``amount of time served and the availability of other remedies,'' such as parole, in making its determination.\310\

\308\ Exhibit 26--U.S. Attorneys Manual at 1040131; see also the executive clemency process at 1040590 (making a nearly identical statement).

\309\ Exhibit 26--U.S. Attorneys Manual at 1040131.

\310\ Id.

If the decision to grant a commutation of sentence is made, the President has several options as to how to effect the commutation. He may commute the sentence to time served, which would cause the prisoner to be released immediately.\311\ The President also is able to reduce a sentence, resulting in two possibilities. First, a reduced sentence could advance a prisoner's parole eligibility or mandatory release date, effecting an immediate release.\312\ However, the prisoner would remain subject to conditions of parole or mandatory release under that scenario. A reduced sentence could also mean exactly what it says, specifying release after the prisoner continues to serve a certain period of time.\313\ In the end, it is the President's responsibility to determine what remedy,

if any, is in the interest of justice.

 \311\ Id.

\312\ Id.

\313\ Id.

b. the faln/macheteros clemency process

1. The application process

On November 9, 1993, Ofensiva '92 filed a petition for executive clemency on behalf of 18 members of the FALN and Macheteros organizations convicted of Federal offenses.\314\ The 18 were: Dylcia Pagan, Elizam Escobar, Ida Luz Rodriguez, Adolfo Matos, Maria Haydee Torres, Carmen Valentin, Carlos Alberto Torres, Ricardo Jimenez, Alicia Rodriguez, Luis Rosa, Oscar Lopez-Rivera, Alejandrina Torres, Edwin Cortes, Alberto Rodriguez, Antonio Camacho-Negron, Juan Segarra-Palmer, Roberto Jose Maldonado, and Norman Ramirez-Talavera.\315\ Dr. Nieves Falcon of Ofensiva '92 earlier had written to the Pardon Attorney urging the release of the 18 prisoners.\316\ The Pardon Attorney had informed Dr. Nieves Falcon that Department of Justice rules required that prisoners file their own petitions.\317\ The rationale for the rule is ``to ensure that [petitioners] actually desire this relief and that [the petitioners] will accept it if it is granted.'' \318\

 \314\ Ofensiva '92 characterizes itself as a human rights organization and is based in Puerto Rico. Their petition on behalf of the prisoners is signed by Dr. Luis Nieves Falcon, Dr. Margarita Mergal and Jan Susler, an attorney for the FALN prisoners. Petition from Ofensiva '92 to Margaret Colgate Love, U.S. Pardon Attorney (Nov. 9, 1993) Department of Justice production 000260-000272 (Exhibit 30). In the spring of 1994, Dr. Nieves Falcon requested that Haydee Beltran's name be taken off the petition. Letter from Margaret Colgate Love, Pardon Attorney, to Dr. Luis Nieves Falcon (May 18, 1994) Department of Justice production 000718 (Exhibit 31).

\315\ Id.

\316\ Memorandum from Margaret Colgate Love, Pardon Attorney, to Philip B. Heymann, Deputy Attorney General (July 29, 1993) (regarding a request for release of the Puerto Rican prisoners by Dr. Luis Nieves Falcon with draft response) Department of Justice production 1041252-1041253. (Exhibit 32).

\317\ Memorandum from Margaret Colgate Love, Pardon Attorney, to Philip B. Heymann, Deputy Attorney General (July 28, 1992) (Exhibit 33).

\318\ The Pardon Attorney used the example of the Puerto Rican nationalists granted clemency by President Carter. OPA allowed the attorneys for those prisoners to file the applications, and one of the prisoners refused to accept President Carter's grant of clemency. Exhibit 32 at 1041253.

 Despite its own regulations, the Justice Department accepted the petition filed by Ofensiva '92 on behalf of the prisoners.\319\ The petition makes clear that the prisoners considered themselves ``political prisoners,'' and similar to their trials, they refused to take part in any process that would legitimize the government's actions against them, therefore they refused to file their own petitions.\320\ The Ofensiva '92 petition went on to explain that in considering the clemency request, OPA must take into account ``the political nature of the entire matter, beginning with the colonial nature of the relationship between the United States

and Puerto Rico.''\321\ In addition, the petition argued that the OPA should compare the prisoners to the forefathers of the United States who fought against their colonial status with Britain, thereby exculpating the prisoners from any acts they may have committed.\322\ However, these were the same failed arguments that the petitioner's raised at the time of the jury trial when they declared themselves prisoners of war. Nevertheless, OPA began the process of reviewing the clemency.

\319\ The Pardon Attorney noted that the regulations were not mandatory, but that OPA normally required petitioners to file on their own behalf. Id. at 1041253.

\320\ Exhibit 30--Petition.

\321\ Id. at 000261.

\322\ Id.

After accepting the petition, OPA began the normal investigation process, requesting background documents such as the presentence and progress reports, as well as judgment and conviction orders.\323\ OPA also contacted the U.S. Attorneys' offices in Connecticut and Illinois in 1994 for their recommendations on clemency. Due to the terrorist acts involved in the underlying crimes, OPA contacted the Federal Bureau of Investigation as well.\324\

\323\ Memorandum from Margaret Colgate Love, Pardon Attorney, to warden, U.S. Penitentiary Atlanta, GA (Dec. 23, 1993) (requesting information on Juan Enrique Segarra-Palmer) (Exhibit 34).

\324\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (1999) (Statement of Neil Gallagher, Assistant Director for National Security, Federal Bureau of Investigation).

2. The campaign for release

The individuals working to secure release of the prisoners mounted a campaign to show support for clemency. Early in the process they involved numerous other groups to lobby for clemency, including Members of Congress and the religious community.\325\ Most active in the campaign for release were Congressmen Luis Gutierrez and Jose Serrano, along with Congresswoman Nydia Velazquez.\326\ Supporters made the same arguments that had been made in the petition for clemency, namely that these were political prisoners and their sentences were disproportionately long. They also focused on the benefits the release would bring to United States and Puerto Rico relations. Many of the supporters were granted meetings with the Pardon Attorney, as well as high-ranking officials in the Department of Justice and the White House.

\325\ Letter from Jose Serrano, Nydia Velazquez, and Luis Gutierrez, Members of Congress, to Janet Reno, U.S. Attorney General (Nov. 22, 1993) (requesting meeting with the Attorney General regarding political sentences) Department of Justice production 001723 (Exhibit 35); letter from Jose Serrano, Nydia Velazquez, and Luis Gutierrez, Members of Congress, to President Bill Clinton (Mar. 29, 1995) (requesting a meeting with the President and Attorney General regarding clemency for Puerto Rican prisoners) Department of Justice production 001721-001722 (Exhibit 36); letter from Ronald V. Dellums, Member of Congress, to President Bill Clinton (Jan. 12, 1996) Department of Justice production 001724 (Exhibit 37); letter from Rev. Nozomi Ikuta, United Church of Christ, to Margaret Colgate Love, Pardon Attorney (July 11, 1995) (requesting meeting, along with phone message) Department of Justice production 10140035-10140036. (Exhibit 38).

\326\ See Exhibits 35 and 36.

In the ordinary course of its review, OPA met with representatives of the prisoners.\327\ When meeting with outside parties interested in the clemency, OPA does not disclose information about the investigative steps being taken in the case, nor does the office disclose at what point in the process the petition is.\328\ Meetings with supporters were described as generally for the purpose of ``their learning how the clemency process works, in general terms, and providing any additional information supporters care to provide about the case.''\329\ The Office of Pardon Attorney further explained that it ``do[es] not engage in a dialogue about the merits of any case, nor do[es] [it] answer factual or opinion questions about the merits of the case, the chances for success, or the thoughts of anyone, including members of [OPA], about the case.''\330\

\327\ Letter from Jan Susler, attorney for prisoners, to Margaret Colgate Love, Pardon Attorney (July 11, 1994) (confirming meeting on July 19, 1994) Department of Justice production 000726 (Exhibit 39).

\328\ Memorandum from Susan M. Kuzma, Office of the Pardon Attorney, to John Trasvina, Office of Legislative Affairs (July 20, 1995) (describing information OPA releases during clemency meetings) Department of Justice production 102000030 (Exhibit 40).

\329\ Id.

\330\ Id.

3. Justice Department action on the clemency

The Pardon Attorney had her first meeting with the attorneys and advocates of the FALN and Macheteros prisoners on July 19, 1994. Attending were Jan Susler and Michael Deutsch, the attorneys for some of the prisoners, Drs. Nieves Falcon and Margarita Mergal of Ofensiva '92, Congressman Gutierrez, and the mother of two of the prisoners, Josefina Rodriguez.\331\ Although OPA agreed to meet with other groups of individuals, and even the same individuals again, the office warned that no new information would be provided to meeting participants, and that expectations should not be raised in that regard.\332\ Aside from their meetings with OPA, supporters of clemency also met with Counsel to the President Jack Quinn in October 1996, and later meetings were held with Deputy Attorney General Holder, Attorney General Reno, and White House Counsels Quinn and Ruff.\333\

\331\ Exhibit 39--Letter from Jan Susler to Margaret Colgate Love (July 11, 1994); letter from Jan Susler, Attorney for prisoners, to Margaret Colgate Love, Pardon Attorney (July 22, 1994) (thanking Pardon Attorney for meeting on July 19, 1994) Department of Justice production 000728 (Exhibit 41); Memorandum from Margaret Colgate Love, Pardon Attorney, to Janet Reno, U.S. Attorney General (July 19, 1994) (reporting on July 19, 1994, meeting with supporters of Puerto Rican nationalists) Department of Justice production 10140028 (Exhibit 42).

\332\ Exhibit 40--Memorandum from Susan M. Kuzma to John Trasvina (July 20, 1995).

\333\ Letter from Jan Susler, attorney for the prisoners, to Margaret Colgate Love, Pardon Attorney (December 1996) Department of Justice production 001116-001117 (Exhibit 43).

As part of the clemency process, the Pardon Attorney reported regularly to the Attorney General's office on status of the clemency for the FALN and Macheteros members and on any new information in the case.\334\ By December 1996, the Pardon Attorney made a recommendation against clemency and that recommendation was forwarded to the White House.\335\ Nevertheless, OPA continued to meet with or respond to requests from the supporters of the FALN and Macheteros clemency.

 \334\ Memorandum from Margaret Colgate Love, Pardon Attorney, to Donna Templeton, Assistant to the Attorney General, with attachments (Nov. 28, 1994) (responding to a request for information on the clemency) Department of Justice production 10140025-10140027 (Exhibit 44).

 \335\ Letter from Margaret Colgate Love, Pardon Attorney, to Charles F.C. Ruff, Counsel to the President (July 25, 1997) (forwarding a letter from former President Carter) Department of Justice production 1041964 (Exhibit 45).

 By fall of 1997, the clemency remained pending, even though the White House had received the Pardon Attorney's recommendation in December 1996. From a September 1997 memorandum from the Pardon Attorney, it appears that the Justice Department had been getting inquiries about the FALN and Macheteros from both the White House and outside parties.\336\ In November 1997, Deputy Attorney General Eric Holder met with clemency supporters Congressmen Jose Serrano, Luis Gutierrez, and Nydia Velazquez.\337\ The Members of Congress argued for commutation of the prisoners' sentences and asked Deputy Attorney General Holder that he ``render to us the ability to be here [in Congress] when these people are released.'' \338\

 \336\ Memorandum from Margaret Colgate Love, Pardon Attorney, to Roger Adams (Sept. 23, 1997) (discussing OPA's policy on responding to clemency inquiries) Department of Justice production 10140020-10140021 (Exhibit 46).

 \337\ Notes of Deputy Attorney General Holder's meeting (Nov. 5, 1997) Department of Justice production 1041804 (Exhibit 47).

 \338\ Id.

 Deputy Attorney General Holder mentioned to the Representatives that the prisoners had not petitioned for clemency on their own, and asked whether that made them unrepentant.\339\ Congressman Gutierrez replied that the fact that the prisoners did not apply ``reinforce[d] the political nature of who they are.'' \340\ However, the Congressman said that the prisoners would provide a written statement answering the question of why they did not apply.\341\ Mr. Holder pressed the question on how the prisoners had changed since they committed the crimes, and Congressman Gutierrez said that the prisoners would reflect on that question also and respond in writing.\342\

 \339\ Id. at 1041805.

 \340\ Id.

 \341\ Id.

 \342\ Id. at 1041806.

 No decisions had been made on the clemency by the spring of 1998. On April 8, 1998, Deputy Attorney General Holder again agreed to meet with a group of supporters, this one from the religious community.\343\ During that meeting, the supporters of the prisoners finally delivered the prisoners' statements promised during the meeting with Congressman Gutierrez in November 1997.\344\ According to notes of the meeting, the Deputy Attorney General discussed whether the prisoners would renounce violence if offered clemency. Reverend Paul Sherry responded that they ``would not change their beliefs.'' \345\ The Department of Justice participants interpreted that statement to mean that ``they would not change their beliefs about the desirability of Puerto Rican independence, although [Reverend Sherry] gave a carefully phrased answer that did not

make it entirely clear that they had renounced the use of violence.'' \346\ The Justice Department asked the supporters additional questions about the prisoners, such as why some of the prisoners had not sought parole when they were eligible. The supporters responded that ``their principles would not allow them to.'' \347\

\343\ At least one member of the group, the Reverend Nozomi Ikuta, had already met with the previous Pardon Attorney, Margaret Colgate Love. Letter from Paul H. Sherry, president, United Church of Christ, to Eric Holder, Deputy Attorney General (Mar. 26, 1998) (listing meeting participants and attachments) Department of Justice production 001718-001720 (Exhibit 48).

\344\ Facsimile from Roger Adams, Department of Justice, to Dawn Chirwa, Associate Counsel to the President (Apr. 21, 1998) (``notes from the meeting, and copy of statement from the prisoners, submitted by Jan Susler on April 10. A copy was also provided by Paul Sherry'') Department of Justice production 1041847-1041853 (Exhibit 49).

\345\ Id. at 1041849.

\346\ Id.

\347\ Id. at 1041850.

During the meeting, Roger Adams, the Pardon Attorney,\348\ again explained the clemency process to the supporters. He also acknowledged that OPA was preparing a report on the clemency petition for the Deputy Attorney General.\349\ He did not mention the OPA report that was prepared in December 1996 and forwarded to the White House on the same clemency request. In addition, in response to questions from the supporters as to the timing of the report, the Deputy Attorney General told them that ``it would likely be fairly quickly'' and added that they ``had delayed its final preparation until after [that] meeting.'' \350\ Between the first meetings and the meeting on April 8, 1998, it is unclear whether OPA revised its guidelines to allow for the sharing of information with clemency supporters. In fact, the representation that a decision would be made soon, was later used by the attorneys for the prisoners as a basis for complaining about their treatment.\351\ After referencing the clemency petition, the attorney even accused the warden at the U.S. Penitentiary at Lewisburg of ``undermin[ing] the positive records all three of [the prisoners] have accumulated, so as to prejudice this effort[.]'' \352\

\348\ Roger Adams was appointed Pardon Attorney after Margaret Colgate Love resigned the position.

\349\ Id. at 1041850.

\350\ Id.

\351\ Letter from Dr. Luis Nieves Falcon, coordinator of the Comité Pro-Derechos Humanos en Puerto Rico, to Eric H. Holder, Jr., Deputy Attorney General (June 3, 1998) (concerning the transfers of Alberto Rodriguez and Ricardo Jimenez to a new prison location, with attachment) Department of Justice production 000882-000886 (Exhibit 50).

\352\ Id. at 000886.

The unsigned document entitled, ``Statement from the Puerto Rican Political Prisoners,'' produced at the meeting, purports to show how the prisoners had changed since the time of their incarceration. However, they continued to blame the government for their own illegal actions, namely bombings and violence, and allege that they were forced into such acts because the government did not allow for ``other avenues for exercising self-determination.'' \353\ In what one could hardly interpret as a sign of change, the prisoners acknowledge:

\353\ Exhibit 49--Facsimile from Roger Adams to Dawn Chirwa (Apr. 21, 1998) at 1041852.

At this juncture, we want to express our disposition to participate in reaching a just and dignified political solution to our colonial problem. If the U.S. Congress and the executive branch of the U.S. government desire to reach a political solution through a truly democratic process, we are disposed to participate in that process, a process which is necessary for reconciliation to take place, for healing one hundred years of wounds to begin . . .

Invoking the right under international law to use all means available does not mean we used them with no respect for human life. . . . Our actions, for the most part symbolic, have had the objective of focusing the attention of the U.S. government on the colonial conditions of Puerto Rico, and not of causing terror to the citizens of the U.S. or Puerto Rico. However, that is not to deny that in all liberation processes, there are always innocent victims on all sides.\354\

\354\ Id. at 1041852-1041853.

When one compares the self-serving nature of this statement with the many communiques found at Appendix I, it is clear that the 16 terrorists have no qualms about lying. This is disturbing to the Committee, particularly given the President's reliance on the promised renunciation of violence. The President is relying on their promises to refrain from violence when the actions of the individuals over a period of nearly three decades sends a very different message.

The President announced his offer of clemency to the members of FALN and Macheteros on August 11, 1999. On August 23, 1999, Pardon Attorney Adams sent an electronic mail message to Jamie Orenstein in the Deputy Attorney General's office regarding the FALN terrorists. Adams stated, ``[a]llthough noe [sic] of the 13 were actually convicted of a bombing, the group with which most of them are associated--the FALN--certainly was responsible for over 100 bombings about 20 years ago.''\355\ This statement by the Pardon Attorney is misleading. The 12 FALN members all were indicted and convicted of the seditious conspiracy alleged in count 1 of their indictments.\356\ That meant that a jury found that they participated in a conspiracy, the result of which was the placement and detonation of 28 bombs at specific locations.\357\ All 12 were convicted of this count.

\355\ Electronic mail from Roger Adams, Pardon Attorney, to Jamie Orenstein, Office of the Deputy Attorney General (Aug. 23, 1999) Department of Justice production 1041803. (Exhibit 51).

\356\ Exhibit 12--Indictment; Exhibit 11--Indictment.
\357\ Id.

After meeting with numerous supporters of clemency and reviewing materials produced on behalf of the prisoners, the Department of Justice transmitted its second report on the prisoners to the White House on July 8, 1999.\358\ As mentioned earlier, after meeting with supporters and requesting all of the background materials, OPA produced the original report by December 1996. Leading up to the 1996 report, the Department of Justice appeared to be following the normal process in reviewing the petition filed on behalf of the FALN and Macheteros members. However, it is apparent that between

December 1996 and the fall of 1997, the Department began to write another report and recommendation to the President. This is particularly odd because the Justice Department report is only a recommendation that the President need not follow.

\358\ ``Log of Documents Subject to Executive Privilege'' (Oct. 14, 1999) White House production (unnumbered).

4. Opposition to the clemency

As part of the clemency process, OPA requested the recommendations of the U.S. Attorneys' Offices that tried the cases involving the FALN and Macheteros members. Although the President has claimed privilege over the actual recommendations, it became clear through documents and testimony that the U.S. Attorneys, sentencing judges, and FBI all opposed a grant of clemency to the proposed individuals.

a. Offices of the U.S. Attorneys

As early as 1994, the U.S. Attorneys from Connecticut and the Northern District of Illinois informed OPA of their opposition to clemency for the FALN and Macheteros members.\359\ However, the President has claimed executive privilege over those letters. Through other documents produced by the Justice Department, it became clear that the U.S. Attorneys offices opposed clemency. After the decision on clemency was made, Deputy Attorney General Eric Holder prepared to make courtesy calls to the U.S. Attorneys for the districts in which the 16 clemency grantees were convicted. Talking points prepared for Mr. Holder in anticipation of the telephone call to U.S. Attorney Scott Lassar state that, ``[t]he United States Attorney for the N.D. Illinois recommended strongly against commutation of sentence. Also, one of the sentencing judges in the N.D. Illinois was quoted in the print media as opposing clemency.'' \360\ Similarly, talking points prepared for the telephone conversation with U.S. Attorney for the District of Connecticut, Stephen Robinson state, ``[t]he United States Attorney strongly opposed clemency in these cases. The sentencing judge also expressed the view that the sentences should stand.'' \361\

\359\ The White House Privilege log lists two memoranda regarding the clemency request for Puerto Rican Nationalist prisoners from Christopher F. Droney, U.S. Attorney, District of Connecticut, to Margaret C. Love, Pardon Attorney (Aug. 26, 1994 and Oct. 19, 1994). It also lists two memoranda regarding clemency request for Puerto Rican Nationalist prisoners from James B. Burns, U.S. Attorney, Northern District of Illinois, to Margaret C. Love, Pardon Attorney (Aug. 26, 1994 and Dec. 15, 1994). ``Log of Department of Justice Documents Subject to President's Assertion of Executive Privilege'' (Oct. 18, 1999) Department of Justice production (unnumbered).

\360\ DAG call to Scott Lassar, U.S. Attorney for the N.D. Illinois, Department of Justice production 10180007 (Exhibit 52).

\361\ DAG call to Stephen Robinson, U.S. Attorney for the District of Connecticut, Department of Justice production 10180008 (Exhibit 53).

b. The Federal Bureau of Investigation

The Department of Justice also asked the FBI for its opinion regarding a commutation of sentence for the FALN and Macheteros members. The FBI conducted most of the original investigations of the two groups, as it is responsible for counterterrorism and counterintelligence efforts in the United States and its territories.\362\ In testimony prepared in anticipation of testifying before Congress, the FBI stated:

\362\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (1999)

(Statement of Neil Gallagher, Assistant Director for National Security, Federal Bureau of Investigation). Copies of audio tapes of Oscar Lopez-Rivera's telephone conversations should have been produced to the Committee under the Committee's subpoena to the Department of Justice. However, as of Nov. 4, 1999, the Justice Department has not produced such tapes to the Committee.

In June of 1999 the FBI was asked by [the] Department of Justice for the FBI's input on the granting of a pardon and/or clemency for the incarcerated Puerto Rican terrorists. The FBI has consistently advised the Department of Justice that the FBI was opposed to any such pardon and/or commutation of sentences for these individuals. As the request for pardon has been pending since 1994, the FBI was unaware that any such commutation of sentences was actually being contemplated or imminent.\363\

\363\ The testimony of Assistant Director Gallagher was submitted to the Justice Department over a week prior to the Committee's hearing. Nevertheless, the Justice Department waited until the evening before the hearing to notify the FBI that it could not present the written testimony because of executive privilege issues. The Committee was forced to subpoena the Justice Department for the redacted written statement. Letter from Jon P. Jennings, Acting Assistant Attorney General, to Dan Burton, chairman, Committee on Government Reform (Sept. 23, 1999) (forwarding redacted FBI written opening statement on FALN clemency as attachment) (unnumbered) (Exhibit 17).

The FBI was concerned about the release for several reasons. In a draft letter responding to a congressional inquiry on the FBI position, Director Freeh noted that although the President had conditioned release upon the renunciation of violence, ``the FBI had previously advised DOJ that `few of the current prisoners have expressed remorse for their crimes or for their victims; rather, most remained committed to violence as a means to achieve Puerto Rican independence.' '' \364\ An additional concern for the FBI was the message that clemency would send to other terrorists. The FBI advised the Department of Justice that it ``had reason to expect the release of these individuals would `psychologically and operationally enhance' the ongoing violent and criminal activities of Puerto Rican terrorist groups.'' \365\ Director Freeh added that, ``any such pardon of the `currently incarcerated terrorists would likely return committed, experienced, sophisticated and hardened terrorists to the clandestine movement.' '' \366\ In case there was any misunderstanding of the FBI's opinion, Director Freeh noted at the end of his letter that, ``[i]t is evident from the foregoing that the FBI was unequivocally opposed to the release of these terrorists under any circumstances and had so advised DOJ.'' \367\

\364\ The letter has a cover sheet on it from the Justice Department explaining that the letter should not be sent because it could be subject to executive privilege. The Department of Justice informed the Committee that the draft letter and cover had inadvertently been produced to the Committee, and it considered the letter to be under executive privilege. Draft letter from Louis J. Freeh, Director, Federal Bureau of Investigation, to Henry J. Hyde, chairman, House Committee on the Judiciary (undated) (explaining FBI position on release of FALN and Macheteros terrorists) Department of Justice production 001950-001952 (Exhibit 54).

\365\ Id. at 001951.

\366\ Id.

\367\ Id.

c. The Bureau of Prisons

While testifying before the Committee, the Assistant Director for Correctional Programs at the Bureau of Prisons, Michael B. Cooksey, stated that the Bureau of Prisons was not asked for its recommendation as to whether the prisoners should be granted clemency.\368\ However, according to OPA, the Bureau of Prisons is not typically consulted for its opinion, rather it is only asked to provide documents relating to the petitioner.\369\ Had either the Justice Department or White House asked the Bureau of Prisons for additional information on the prisoners, they would have found that at least two of the prisoners recently had made statements about furthering the goals of the FALN.\370\ After the announcement of the grant of clemency, the Bureau of Prisons had read media accounts of alleged statements of at least one prisoner on its tapes of inmates conversations.\371\ In response, the Bureau of Prisons conducted its own investigation to determine whether such statements actually existed.\372\ After discovering the two phone conversations, the Bureau of Prisons forwarded the information to the Department of Justice on September 7, 1999.\373\ Testifying on behalf of the Justice Department, Acting Assistant Attorney General Jon Jennings was asked whether such information would have been material to the Justice Department recommendation on the clemency matter, and he replied that it would have been relevant information.\374\

\368\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (1999) (Testimony of Michael B. Cooksey, Assistant Director for Correctional Programs, Bureau of Prisons).

\369\ Interview with Roger Adams, Pardon Attorney (Sept. 18, 1999).

\370\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (1999) (Testimony of Michael B. Cooksey, Assistant Director for Correctional Programs, Bureau of Prisons).

\371\ Id.

\372\ Id.

\373\ Id.

\374\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (1999) (Testimony of Jon P. Jennings, Acting Assistant Attorney General, Department of Justice).

d. The victims of the FALN and Macheteros' violence

President Clinton's public statements regarding the rights of crime victims have been unambiguous. As he signed the Victim Rights Clarification Act of 1997 on March 19, 1997, President Clinton stated that ``when someone is a victim, he or she should be at the center of the criminal justice process, not on the outside looking in.'' \375\ On April 20, 1998, in his proclamation declaring National Crime Victims' Rights Week, President Clinton characterized as ``fundamental'' the right of crime victims ``to be notified of a convicted criminal's release from incarceration.'' \376\ Despite these strong statements, it appears that none of the FALN's victims were contacted, much less consulted, during the clemency review process.

\375\ The White House, Office of the Press Secretary, press release dated Mar. 20, 1997 (viewed Nov. 2, 1999), (Exhibit 55).

\376\ President William J. Clinton, Proclamation 7084, ``National Crime Victims' Rights Week, 1998,'' 34 Weekly Comp. Pres. Doc. 679 (Apr. 27, 1998). (Exhibit 56).

The experience of Thomas Connor, whose father Frank Connor was killed in the FALN's Fraunces Tavern bombing on January 24, 1975, is representative. Mr. Connor informed this Committee that he received no official notice of the clemency, stating that his family ``found out by reading the newspaper,' ' \377\ and that his family was ``never contacted by Janet Reno or anyone at the Justice Department or anyone at the White House regarding our views on clemency.' ' \378\ Connor also stated that ``[b]ecause no notice was given, had the terrorists renounced violence and accepted clemency right away, they may actually have been out of jail before we ever learned of the offer.' ' \379\ The administration certainly did not take into account the experiences of those that have been directly affected by the FALN or Macheteros, as Connor explained:

\377\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (Sept. 21, 1999) (remarks of Thomas Connor).

\378\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (Sept. 21, 1999) (written statement for the record of Thomas Connor).

\379\ Id.

The next indiscriminate bombing in this country will probably not kill me or anyone else in my family, but it may harm someone that you all know or love. And whenever that happens and whoever is the bomb-maker, I, unlike the President, will feel the pain of the victims, and he will be partially responsible for it.\380\

\380\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (Sept. 21, 1999) (remarks of Thomas Connor).

Further, those victims who were aware that clemency for the FALN terrorists was under consideration were rebuffed in their efforts to involve themselves in the review process. Anthony Senft, a New York City Police Department bomb squad detective who was maimed by an FALN bomb on December 31, 1982, learned that FALN supporters were encouraging the President to grant clemency. Detective Senft stated before this Committee that ``[s]ince 1997, my wife and I have been writing letters to our President. We've written four letters to Janet Reno. We have never received a response.' ' \381\ Detective Senft also told the Committee:

\381\ Id. (remarks of Detective Anthony Senft).

. . . I was severely injured by one of five bombs placed by the FALN while my partner and I attempted to render it safe. On that day I received a lifelong sentence without the opportunity for parole, time off for good behavior, and no chance of clemency. My sentence includes five reconstructive operations on my face, the loss of my right eye--my left eye is deteriorating as we speak--and a 60 percent hearing loss in both ears, a fractured hip, severe vertigo, and the hell of a post-traumatic stress disorder. My only solace was the fact that 16 members of the FALN were serving prison sentences for crimes committed against American citizens.\382\

\382\ Id.

It is shocking that any number of clemency supporters were able to get meetings with the Pardon Attorney, Deputy Attorney General, Attorney General, and White House staff, while this former detective, who was wounded in the line of duty, could not even get one of his letters answered.

Detective Senft's partner, Richard Pastorella, was also wounded in the same FALN bombing. Also like his partner, the Justice Department never contacted Detective Pastorella regarding the clemency. Detective Pastorella was completely blinded by the FALN bomb, and lost the fingers of his right hand.\383\ Perhaps he could have shared his experience with the Justice Department or White House, as he had shared it with the Committee. He testified before the Committee in order ``to give a human face to what terrorism truly is.'' \384\ He told the Committee:

\383\ Id. (remarks of Detective Richard Pastorella).
\384\ Id.

When my granddaughters present me with crayon drawings and are pleased to show them to me, I have to pretend that I can see them and enjoy their effort. [And] when they ask me to go outside and play ball with them, I cannot. I don't have the fingers to hold the ball. I can't even see it coming. I have sacrificed my pride, my dignity, and will never be free. Yet these terrorists are free to roam our streets here in America.\385\

\385\ Id.

Diana Berger Ettenson, widow of Alejandro Berger, who was killed in the January 24, 1975, Fraunces Tavern bombing, related a similar lack of cooperation from the administration: ``I asked the White House for copies of letters from those who petitioned for clemency. To date, I have not received them.'' \386\ Similar to the other victims of the FALN, Mrs. Berger Ettenson was not advised before their release. She explained:

\386\ Id. (remarks of Diana Berger Ettenson).

On the day of the bombing, I was driving to New York to meet Alex and his parents. I heard the news of the blast on my car radio. The news reported that a group known as the FALN had claimed responsibility for the bombing. I had never heard of this group before. However, this group has haunted me to this day. I had to tell Cecelia and Joseph Berger that their only child had been murdered. I do not think I have to tell you in detail what this act of terror did to my family and friends.\387\

\387\ Id.

Although these victims of FALN violence could not get their letters or requests answered, the Justice Department and White House were happy to accommodate the supporters of clemency. At the same time, Attorney General Reno apparently was meeting with pro-clemency activists personally. For example, Detective Senft testified before this Committee that a pro-clemency activist named Alice Cordova boasted of her ``sit-down interview'' with Attorney General Reno regarding clemency for the FALN terrorists.\388\ The Clinton administration ignored the FALN's many victims when it failed to consult with, or even notify, them prior to offering the terrorists clemency. In

doing so, the administration left those victims on the outside of the clemency process, looking in.

\388\ Id. (remarks of Anthony Senft).

5. Two Justice Department reports on clemency

According to privilege logs produced by both the White House and Department of Justice, the Department transmitted two reports on clemency to the Counsel to the President.\389\ The first report was transmitted in December 1996.\390\ The privilege log reflects that the second report was transmitted to the White House on July 8, 1999.\391\ Because the President claimed executive privilege over any documents or correspondence relating to the reports, it is impossible to determine why two reports were created. Through the privilege logs, one is able to get an idea of the timing of the reports and other correspondence between the White House and Justice Department at the time the clemency was being considered.

\389\ A privilege log is a list of documents over which the President has claimed executive privilege. These documents are identified by control number, author, addressee, date, and description. However, the documents are not produced to the Committee. ``Log of Documents Subject to Executive Privilege'' (Oct. 14, 1999) White House production (unnumbered) (Exhibit 57); ``Log of Department of Justice Documents Subject to President's Assertion of Executive Privilege'' (Oct. 18, 1999) Department of Justice production (unnumbered) (Exhibit 58).

\390\ Exhibit 45--Margaret Colgate Love letter to Charles F.C. Ruff (July 25, 1997).

\391\ Exhibit 57--White House privilege log at 1.

The first mention of a report to the White House occurs on December 5, 1996, when Pardon Attorney Margaret Colgate Love sent a 35-page document to Associate Counsel to the President Dawn Chirwa, which was described as a ``cover memorandum with attached draft document to Jack Quinn, Counsel to the President, from Jamie S. Gorelick, Deputy Attorney General, regarding clemency matter.'' \392\ The Justice Department's log does not list such a report until December 16, 1996, when Dennis M. Corrigan, Executive Assistant and Counsel, Office of the Deputy Attorney General transmits the December 4, 1996, report to Counsel to the President Jack Quinn. There is no further activity until May 1997.\393\ These documents are the original recommendations of the Justice Department. From the names on the transmittal, it would appear that this first report was approved by the Deputy Attorney General, and would be considered the official position of the Department of Justice.

\392\ Id. at 6.

\393\ Id. at 5; Exhibit 58--Department of Justice privilege log at 20.

Soon after the FALN and Macheteros clemency report was transmitted, Chirwa sent a two-page memorandum to Roger Adams, who was then Counsel to the Deputy Attorney General, concerning ``information relating to clemency request for Puerto Rican Nationalist prisoners.'' Two days later, on May 16, 1997, Chirwa sent another two-page memorandum to Pardon Attorney Love. Although the Committee does not have the memoranda, one could assume that there were questions about the clemency recommendation. Several days after Chirwa contacted the Justice Department, Pardon Attorney Love contacted the General Counsel at the U.S. Parole Commission regarding the clemency

matter.\394\

\394\ Exhibit 58--Department of Justice privilege log at 18.

There is another break in the Justice Department and White House privileged communications until July 23, 1997, when Love sent Chirwa a seven-page memorandum ``concerning information relating to clemency request for Puerto Rican Nationalist prisoners, with handwritten note attached.'' \395\ Two days later, Love forwarded to Counsel to the President Ruff a letter from former President Jimmy Carter, and referenced the December 16, 1996, report.\396\ Although the White House listed the document on its privilege log, the Department of Justice produced the actual transmittal letter referencing its recommendation against clemency.\397\

\395\ Id. at 18; Exhibit 57--White House privilege log at 5.

\396\ Exhibit 45--Letter from Margaret Colgate Love to Charles F.C. Ruff (July 25, 1997).

\397\ Exhibit 57--White House privilege log at 4.

As of June 1997, the White House internally acknowledged that the Department of Justice was not in favor of the clemency. The June 10, 1997, briefing materials for Vice President Gore's meeting with the congressional Hispanic Caucus discuss the clemency:

Reps. Serrano, Gutierrez, or Velazquez may privately urge you to support granting clemency to 15 citizens of States of Puerto Rican origin incarcerated for crimes committed in connection with efforts to encourage the granting of independence to Puerto Rico. A campaign is under way. The campaign has broad Puerto Rican support but Rep. Romero-Barcelo is opposed and Justice is disinclined.\398\

\398\ White House production CL 16760-16772, at 16765 (emphasis added).

Toward the end of 1997, Pardon Attorney Margaret Love was preparing to leave the Department of Justice. In September 1997, she wrote a 36-page memorandum to Roger Adams in the Deputy Attorney General's Office, ``reflecting status and nature of clemency deliberations concerning Puerto Rican Nationalists, with series of 9/12/97-9/19/97 electronic communications between Margaret Colgate Love and Roger C. Adams concerning same . . .'' \399\ That memorandum was the final internal Department of Justice document received or written by Love reflected on the privilege log.

\399\ Exhibit 58--Department of Justice privilege log at 18.

Throughout the closing months of 1997 it appears that Deputy Attorney General Eric Holder was active in the issue. The privilege log reflects at least two notes regarding his questions on the clemency or his thoughts on the matter.\400\ Meanwhile, Counsel to the Deputy Attorney General Roger Adams was appointed Pardon Attorney. It appears from the privilege log that Adams began working on the clemency matter for OPA.

\400\ Id. at 16.

The issue of clemency for the FALN and Macheteros prisoners picked up again in the summer of 1998. On May 19, 1998, Pardon Attorney Adams sent Deputy Attorney General Holder a 48-page

draft memorandum to the President, ``concerning clemency for Puerto Rican Nationalist prisoners.'' \401\ Several months later, the Attorney General was informed of the new activity concerning the clemency. On August 7, 1998, the Pardon Attorney prepared a two-page memorandum regarding the history of the clemency request, which was forwarded to Attorney General Reno on the following day.\402\ By the end of August, the Pardon Attorney and the Office of the Deputy Attorney General were again working on drafts of the clemency report.\403\ On September 1, 1998, Pardon Attorney Adams discussed the draft memorandum with Associate Counsel to the President Chirwa, again bringing the White House into the picture.\404\

\401\ Id.

\402\ Id. at 15.

\403\ This is the same time period in which they were meeting with supporters of clemency as well. Id.

\404\ Id. at 14.

It was not until the spring of 1999 when the privilege log shows more activity on the clemency report. Between April and July 1999, there were numerous drafts of the report and discussions between OPA and the Office of the Deputy Attorney General.\405\ In addition, OPA was consulting with the Chief of Terrorism and Violent Crimes Section, and other attorneys in the Criminal Division at the Department of Justice. However, in March 1999, according to White House documents, the Justice Department continued to oppose the clemency. In an e-mail to Counsel to the President Charles Ruff, Deputy Chief of Staff Maria Echaveste wrote, ``[m]y recollection of the last status is that there was some movement towards a conclusion that commutation might be ok for some of the prisoners but not all-- but DOJ concluded no go then--is that about right?'' \406\

\405\ Id. at 7-14.

\406\ White House production CL 16653 (emphasis added).

On July 8, 1999, Deputy Attorney General Holder sent to the President a ``memorandum regarding clemency matter.'' \407\ This was the second report sent to the White House regarding clemency for the members of the terrorist groups FALN and Los Macheteros. At the end of July 1999, Counsel to the President Ruff personally spoke with an attorney in the office of the Deputy Attorney General regarding the clemency.\408\ On August 9, 1999, OPA and the Deputy Attorney General's office held a meeting about the clemency.\409\ The President announced the clemency 2 days later on August 11, 1999.

\407\ Exhibit 57--White House privilege log at 1 (emphasis added).

\408\ Exhibit 58--Department of Justice privilege log at 7.

\409\ Id. at 4.

Although it is impossible for the Committee to know what was in the Department of Justice's report, an article in the New York Times claimed to have an official source with knowledge of information in the report.\410\ The article stated that although the opposition of the U.S. Attorneys and FBI was mentioned in the report, the Justice Department made no specific recommendation. Rather, the report ``contained what law-enforcement officials said was a more carefully worded analysis that presented the President with multiple options for each prisoner, from unconditional release to no leniency whatsoever.'' \411\ This is a matter of some concern to the Committee because it appears that the Justice Department has bent and even changed its rules to accommodate this politically

charged clemency. By refraining from giving a clear recommendation, it is almost as if the Justice Department is doing the best that it can to bolster a decision that had already been made.

\410\ David Johnston, Federal Agencies Opposed Leniency for 16 Militants, N.Y. Times at A1 (Aug. 27, 1999).
\411\ Id.

6. The White House's role in the clemency process

The White House was involved in the clemency process from nearly the beginning. The President's Interagency Working Group on Puerto Rico took an interest in the petition filed on behalf of the members of the FALN and Los Macheteros terrorist organizations. Thereafter it became involved in the clemency process, working with clemency supporters to bring the issue more support and attention. Although the White House staff worked regularly with clemency supporters, they never met with the victims of FALN and Macheteros violence or any groups that opposed the clemency. Most groups in opposition did not know the clemency was being considered, or never believed that it would be seriously considered due to the nature of the crimes committed. It appears that the White House was aware of the opposition of the Department of Justice and law-enforcement, and was searching for a way in which its decision would not be in direct contradiction to the Department of Justice recommendation.

The White House first became involved in the clemency through the Interagency Working Group on Puerto Rico ('`Working Group''), co-chaired by Marcia Hale and Jeffrey Farrow. On October 24, 1994, the Special Assistant to Jeffrey Farrow, Mayra Martinez-Fernandez, wrote a memo to Farrow on the ``Puerto Rico Political Prisoners.''

\412\ It is obvious even from the title of her memorandum that she believed that the FALN members were imprisoned for their political beliefs rather than the terrorist acts for which they were convicted. In fact, in the very first paragraph of the memorandum Martinez-Fernandez states, ``[t]hey have been persecuted because of their commitment and activism in support of Puerto Rican independence.''

\413\

\412\ Memorandum from Mayra Martinez-Fernandez, to Jeffrey Farrow (Oct. 24, 1994). White House production CL 15537-15538. (Exhibit 59).
\413\ Id.

The Committee finds it troubling that a White House aide would show such disregard for the victims of FALN and Macheteros violence and the laws of the United States. The Martinez-Fernandez memorandum continues to argue against the long sentences being served by the FALN members: ``[t]hese sentences and the time already served are far longer than the average time served in the U.S. for the most heinous offenses against society, and far longer than the average time served by political prisoners in other countries!'

\414\ Again, this position is inconsistent with the statutes leading to the FALN and Macheteros' sentences, and there appears to be no accompanying enthusiasm to change the law. In effect, the early White House position appears to be more tied to support for the politics of these prisoners than concern for the laws.

\414\ Id.

Even more disturbing, the memorandum not only discusses the deserving and good nature of the prisoners, it also discusses the benefits to the Clinton administration:

The release of these Puerto Rican men and women would be welcomed as a show of good faith and a gesture to demonstrate that reconciliation, peace-making and human rights (as well as the resolution of the situation in Puerto Rico) are among Clinton's priorities. This could be a tangible accomplishment of the Working Group that not only enjoys wide support in the U.S., Puerto Rico, and internationally, but that is fairly easy to accomplish and will have a positive impact among strategic Puerto Rican communities in the U.S. (read, voters).\415\

\415\ Id.

It is clear from the memorandum that Martinez-Fernandez had no idea what was involved in a grant of clemency, much less commuting a prisoner's sentence. However, it appears her memo was acted upon; the ``Working Group'' was behind the clemency and continued to work with advocacy groups until the commutations were finally granted. As a final addition to the

memorandum, Martinez-Fernandez wrote:

The release of these 15 Puerto Ricans is of special significance to me. I know most of these people's families. I know of their hard work and contributions to Chicago's Puerto Rican community. They are truly good people who are where they are for wanting their country to be free. That is not a crime. The history of the birth of this country clearly demonstrates the burning desire of a people to be free from colonial control. As a Puerto Rican, I feel I own [sic] them for their sacrifice. As people who love and value democracy and liberty, I feel that this Administration should take a stand for what they believe in, and set an example for other countries to follow by setting free 15 of their own political prisoners.\416\

\416\ Id.

As a further example, Martinez-Fernandez wrote a June 7, 1995, memorandum to Jeffrey Farrow, updating him on the ``Puerto Rican Prisoners.'' \417\ In the memorandum, she mentioned seven different groups that were working on behalf of the prisoners. Perhaps one of the most interesting was Gerry Adams of the Irish Republican Army. Martinez-Fernandez wrote of Adams, ``[h]e made a commitment to bring up the issue of the Puerto Rican political prisoners in the negotiations which involve the White House and the Government of Great Britain concerning peace in Northern Ireland.'' \418\

\417\ Memorandum from Mayra Martinez-Fernandez to Jeff Farrow (June 7, 1995). White House Document production CL 15534. (Exhibit 60).

\418\ Id.

In her memoranda, Martinez-Fernandez consistently refers to the FALN and Macheteros members as ``political prisoners.'' Indeed, the prisoners themselves argue that they have been incarcerated for political reasons. However, the only elected Federal representative from Puerto Rico, Resident Commissioner Carlos Romero-Barcelo disputed the characterization. He wrote that:

[T]he terrorists aimed to legitimize their actions by

seeking protection as political prisoners or prisoners of conscience through Amnesty International, the leading human rights organization in the world. According to an editorial in the San Juan Star, the principal English language newspaper in Puerto Rico, Amnesty International rejected their request, clarifying that because ``the crimes the 15 committed were violent in nature . . . disqualified them as political prisoners in describing their status.''

\419\ Letter from Carlos Romero-Barcelo, Resident Commissioner for Puerto Rico, to Dan Burton, chairman, House Government Reform Committee (Sept. 14, 1999) (Exhibit 61).

If one believes that the White House should be impartial when reviewing and handling clemency matters, Martinez-Fernandez should have had no role in the petition for clemency on behalf of the FALN and Macheteros members. Nevertheless, she and the Working Group played a major role, working to recruit supporters and organize the campaign for release.

The White House Counsel's Office is historically and typically the liaison with OPA on the issue of clemency.\420\ The Counsel's Office first became involved in the FALN and Macheteros clemency in early June 1995.\421\ Associate Counsel Cheryl Mills \422\ handled clemency issues for the Counsel's Office.\423\ On June 5, 1995, the Working Group asked to meet with Associate Counsel Mills to discuss the clemency for the FALN and Macheteros members.\424\ The meeting was described to Mills:

\420\ DOJ Organization, Mission and Functions Manual, Office of the Pardon Attorney at 51 (July 1999).

\421\ Electronic mail from Vicki J. Divoll to Cheryl D. Mills, Associate White House Counsel (June 5, 1995). White House production CL 16383 (Exhibit 62).

\422\ Mills was subsequently promoted to Deputy Counsel to the President.

\423\ Id.

\424\ Electronic mail from Vicki J. Divoll to Cheryl D. Mills, Associate White House Counsel (June 5, 1995). White House production CL 16382 (Exhibit 63).

The people involved in this potential meeting are not outsiders seeking to influence the White House regarding these prisoners. They are all White House, DOJ, and Commerce Dept. officials who are members of the Inter-Agency Working Group on Puerto Rico who want to discuss how to respond to expected pressures and requests for meetings with the President and others about these prisoners.\425\

\425\ Electronic mail from Vicki J. Divoll to Cheryl D. Mills, Associate White House Counsel (June 7, 1995). White House production CL 16384 (Exhibit 64).

The Working Group did hold a meeting on June 21, 1995, however it is not clear whether Associate Counsel Mills attended.\426\

\426\ The White House inadvertently produced handwritten notes of Mayra Martinez-Fernandez, Special Assistant to the Co-Chair of the Working Group, taken during the meeting. The notes do not reflect who was in attendance. Letter from Dimitri J. Nionakis, Associate Counsel to the President, to Kristi L. Remington, senior counsel, House Government Reform Committee (Oct. 14, 1999). (Exhibit 65).

Notes of the June 21, 1995, Working Group meeting reflect that several issues arose, including, ``how should we respond to this political request.'' \427\ The notes made clear that the White House was hearing from Puerto Rico on the clemency issue, however, ``the effort [was] led by P[uerto] R[icans] in the U.S.'' The Working Group also acknowledged that OPA had to resolve the issue of the petition for clemency. They recognized that it was a problem that the prisoners would not file their own petitions.\428\ During the meeting, the Working Group discussed the general process of clemency. The notes indicated that the last step would be the transmittal of the Department of Justice recommendation to the Counsel's Office, and that it ``pretty much follows [the] recommendation by [the] Pardon Attorney.'' \429\ The notes further explained, ``[I]f parole is a possibility, they use it rather than a commutation. They could also enable the process to make them parole eligible. Most of them don't want to apply for parole--which is another political statement on their part.'' It was true that the prisoners should have faced a major obstacle to their clemency in that all of them would be eligible for parole after serving a certain portion of their sentences. However, most of the FALN and Macheteros members refused even to apply for parole because it would recognize the United States Government and its authority over them. Those that did apply for parole had been rejected as poor candidates. Finally, the participants in the meeting noted that this was a ``high priority P[uerto] R[ican] issue.'' \430\ This indicates a level of political calculation that is troubling.

\427\ Handwritten notes of Mayra Martinez-Fernandez, Special Assistant to the Co-Chair of the Working Group, June 21, 1995. White House production CL 15550-15553. (Exhibit 66).

\428\ Id.

\429\ Id. at 15551.

\430\ Id. at 15553.

The White House produced notes taken by Mayra Martinez-Fernandez from two other Working Group ``strategy meetings'' on the clemency matter. In the first set of notes, the Working Group discusses the actions congressional groups would take on the clemency.\431\ Congressmen Gutierrez, Serrano, and Congresswoman Velazquez were taking the lead on all efforts supporting clemency. They noted that, ``Velazquez, Gutierrez and Serrano not voting with President on some important legislation unless he commits to release prisoners right after 1996 elections.'' \432\ Under a separate heading of ``Meetings,' the Working Group listed individuals who should request meetings with Pardon Attorney Margaret Colgate Love.\433\ They added, ``[s]ome of these people should meet with President Carter and request a letter to the President.'' \434\ President Carter did ultimately write a letter to Attorney General Reno supporting the clemency for the FALN and Macheteros members. However, it appears odd that members of the President's Working Group would organize outside support for the clemency. From the Committee's perspective, an impartial position would be more appropriate. In fact, the notes indicate that they planned to identify ``liberal reporters in key media outlets,' in an effort to create more support.\435\

\431\ Handwritten notes of Mayra Martinez-Fernandez, Special Assistant to the Co-Chair of the Working Group, undated. White House production CL 15554-15558. (Exhibit 9).

\432\ Id. at 15554 [emphasis added].

\433\ Id. at 15556.

\434\ Id.

\435\ Id. at 15557.

On July 7, 1995, the Working Group held another ``strategy meeting.'' \436\ The first item on the agenda was to ``continue letter campaign from U.S. as Democratic voters. Personalize them.'' \437\ The notes go on to list numerous individuals who should write letters to the President and request meetings with officials in Illinois and Chicago who might oppose the clemency.\438\ Most of the prisoners were convicted in Illinois, therefore they proposed meetings with the Illinois Governor and Attorney General, as well as the mayor of Chicago.\439\ Again, these are actions that it would appear inappropriate for the White House to be organizing. To use U.S. taxpayer dollars to promote something of this nature for political benefit is deeply disturbing. Because the Committee is unable to discuss the clemency issue with anyone in the White House, it is left to speculate that the purpose of these activities was to be able to point to outside support for clemency when announcing its decision.

\436\ Handwritten notes of Mayra Martinez-Fernandez, Special Assistant to the Co-Chair of the Working Group, July 7, 1995. White House production CL 15559-155562. (Exhibit 67).

\437\ Id. at 15559.

\438\ Id.

\439\ Id. at 15559-15560.

Few documents were received from the White House during the time between the July 1995, meeting and mid-1998, when the clemency issues moved to the forefront. However, internal White House documents do indicate that White House Counsel Jack Quinn met with Representatives Serrano, Gutierrez, and Velazquez on December 16, 1996.\440\ The meeting was held on the same day that the Justice Department transmitted its recommendation against clemency for the FALN and Macheteros clemency. It is not until a year later that Jeffrey Farrow, the Co-Chair of the Working Group, asked for a meeting with Associate Counsel Dawn Chirwa about the clemency issue.\441\ Farrow wrote in an electronic mail message, ``[d]id Maria Echaveste ask if you could come to her office tomorrow at 2 re[:] Puerto Rican political prisoners? She's sympathetic and wanted to discuss the issue.'' \442\ Again, it is troubling that a senior White House staff member would refer to the terrorists as ``political prisoners.''

\440\ Electronic mail from Janet Murguia, Deputy Assistant to the President for Legislative Affairs (House), to Stacey L. Rubin, Special Assistant to the Deputy Director for Legislative Affairs (Dec. 16, 1996). White House production CL 16385. (Exhibit 68).

\441\ Electronic mail from Jeffrey Farrow, Co-Chair Interagency Working Group on Puerto Rico, to Dawn Chirwa, Associate Counsel to the President (Dec. 16, 1997). White House production CL 16412. (Exhibit 69).

\442\ Maria Echaveste is now the Deputy Chief of Staff at the White House. Id. (emphasis added).

In 1998, the White House was more active on the FALN and Macheteros clemency. On March 26, 1998, an organization supporting the release of the prisoners sought to deliver petitions for the prisoners' release to the White House.\443\ On the same day, a representative of the Carter Center, Ambassador Harry Barnes, requested to meet with the Co-Chair of the Working Group, Jeffrey Farrow. Farrow noted in an electronic mail message regarding the two requests:

\443\ Electronic mail from Jeffrey Farrow, Co-Chair Interagency Working Group on Puerto Rico, to Dawn Chirwa, Associate Counsel to the President and Fred Duval (Mar. 11, 1998). White House production CL 16428. (Exhibit 70).

Fred and I plan to be in Puerto Rico on the 26th, but I think it would help on the issue--since it will not be resolved soon--to have these people received. This is the type of meeting that we discussed having at our meeting in Maria's office. We (Dawn [Chirwa], Janet, Suzanna Valdez, and I) symbolically received petitions on the issue before. (Reps. Serrano, Velazquez [sic], and Gutierrez were part of that presentation. They are not making this request but we may want to see if at least the NY Members want to be here if there's a brief meeting.) \444\

\444\ Id.

The message represents another example of the White House organizing support for the clemency. It is not clear why they put so much effort into the appearance of things, when the President could grant clemency at any time. Nevertheless, the meetings with supporters continued.

In June 1998, Working Group Co-Chair Jeffrey Farrow was organizing a high level meeting for the family of the prisoners. He consulted with Deputy Chief of Staff Maria Echaveste, Deputy Director for Legislative Affairs Janet Murguia, Associate Counsel Dawn Chirwa, and Director of Intergovernmental Affairs Mickey Ibarra.\445\ Farrow wrote:

\445\ Electronic mail from Jeffrey L. Farrow, Co-Chair Interagency Working Group on Puerto Rico, to Maria Echaveste, Deputy Chief of Staff; Janet Murguia, Deputy Director for Legislative Affairs; Dawn Chirwa, Associate Counsel to the President (June 11, 1998). White House production CL 16430. (Exhibit 71).

Mickey and I want to make sure you agree on the advisability of meeting with family members of the Puerto Rico independence crimes prisoners. He and I discussed the issue after his e-mail copied to you. He now has more background on what we have been doing on this matter, feels more comfortable, and will be if you are. Are you? Additionally, my sense from the families' counsel is that they plan a low-key visit aimed at adding to the human dimension on the issue (following, in particular, the religious leaders' presentations to Chuck Ruff and Jack Quinn.) \446\

\446\ Id.

A month later, Farrow prepared talking points for the Vice President's meeting with the Hispanic Caucus and included the ``Puerto Rican Political Prisoners.'' \447\ He noted that, ``Justice is expected to make a recommendation on the cases soon.'' \448\

\447\ Electronic mail from Jeffrey L. Farrow, Co-Chair Interagency Working Group on Puerto Rico, to Ricardo Gonzalez, Office of the Vice President (July 16, 1998). White House production CL 16415-16416. (Exhibit 72).

\448\ Id.

On June 4, 1998, Farrow was quoted in the San Juan Star regarding the clemency for the FALN and Macheteros

members.\449\ He indicated to the reporter that the decision may be near, ``We expect that the Department of Justice will complete its review and submit its recommendations in a few months[.]'' Although the Justice Department allegedly had a clear policy on the discussion of the status of clemency petitions, it is not clear whether the White House had such a policy. It appears that Farrow spoke regularly with reporters on the issue. In an internal OPA electronic mail message, staff informs Pardon Attorney Adams that, ``[t]he White House contact who has told reporters that they are expecting a recommendation in about a month regarding the Puerto Ricans' pardons is Jeffrey Farrow. He is apparently the 'Puerto Rican contact' at the White House.'' \450\ In fact, some at the White House referred to him as the ``guru on the issue.'' \451\

\449\ Farrow: Pardon Decision for 15 P.R. Inmates May Be Near, San Juan Star, June 4, 1998, at A7.

\450\ Electronic mail from Chris J. Watney, Office of the Pardon Attorney, to Roger Adams, Pardon Attorney (Dec. 4, 1998). Department of Justice production 1040931. (Exhibit 73).

\451\ Electronic mail from Maritza Rivera to Maureen Shea (Oct. 28, 1998). White House production CL 16501. (Exhibit 74).

In early 1999, Farrow appeared to be pushing for a resolution of the clemency issue. He writes in an electronic mail message:

We should think about a meeting soon with Reps. Gutierrez, Velazquez, and Serrano on the Puerto Rico independence crimes prisoners issue. They have requested one with the POTUS but the options include the VP and John as well. The issue should be resolved soon--the petitions have been before us for a long time. The VP's Puerto Rican position would be helped: The issue is Gutierrez's [sic] top priority as well as of high constituent importance to Serrano and Velazquez.\452\

\452\ POTUS is the President of the United States. Electronic mail from Jeffrey L. Farrow, Co-Chair Interagency Working Group on Puerto Rico, to Fred Duval, Mickey Ibarra, Maria Echaveste, and Janet Murguia (Mar. 6, 1999). White House production CL 16653 (emphasis added). (Exhibit 75).

The following day, Deputy Chief of Staff Maria Echaveste forwards the electronic mail message to Counsel to the

President, Charles F.C. Ruff, urging a meeting:

Chuck--Jeff's right about this--very hot issue. I would suggest that Chuck and I meet with these members once we have the latest update from Chuck, unless John [Podesta] feels like taking the time on this difficult issue. My recollection of the last status is that there was some movement towards a conclusion that commutation might be ok for some of the prisoners but not all--but that doj [Department of Justice] concluded no go then--is that about right? \453\

\453\ Exhibit 75--Electronic mail from Maria Echaveste, Deputy Chief of Staff, to Charles F. Ruff, Counsel to the President. White House production CL 16653. (Mar. 7, 1999).

In fact, Ruff did meet with the Representatives on April 21, 1999, to discuss the clemency issue.\454\

\454\ Also attending the meeting were Jeffrey Farrow and Dawn Chirwa. Electronic mail from Jeffrey Farrow to Fred Duval, Maria Echaveste, Maritza Rivera, Mickey Ibarra, and Janet Murguia (Apr. 19, 1999). White House production CL 16496. (Exhibit 76).

By July 8, 1999, the Department of Justice transmitted its second clemency report on the petition of the FALN and Macheteros members to the White House. However, the President had not yet made his decision public. A background memo and talking points prepared by Jeffrey Farrow for the White House Press Secretary in July 1999 discuss a demonstration at the White House:

A demonstration in front of the White House July 23rd is planned to include a refusal to move at 1 pm. At the same time, representatives of the demonstrators are to meet with inside [sic] on the matter (Associate Counsel to the President Meredith Cabe and Jeffrey Farrow, Co-Chair of the President's Interagency Group on Puerto Rico).

From the electronic mail message, it appears as though Farrow had coordinated with the demonstrators in order to produce the greatest effect from the event.

On August 11, 1999, the President announced his decision and offered the grants of clemency. He explained that, ``[he] commuted the sentences of eight of these prisoners to between 23 and 26 years thereby making them eligible for parole pursuant to the mandatory release standards applicable to all prisoners.'' \455\ The eight prisoners were: Elizam Escobar, Ricardo Jimenez, Adolfo Matos, Dylcia Pagan, Alicia Rodriguez, Ida Luz Rodriguez, Luis Rosa, and Carmen Valentin.\456\ The President commuted the sentences of three other prisoners, Edwin Cortes, Alberto Rodriguez, and Alejandrina Torres, to 26 years, also making them eligible for parole.\457\ Oscar Lopez was treated differently because he also had a separate 15-year sentence for attempted escape.\458\ The President proposed commuting his original sentence to 29 years, but would not have commuted the time for the escape attempt.\459\ The last four prisoners were members of the Macheteros. Two of the individuals were already out of prison, but had not paid their fines. Roberto Maldonado-Rivera and Norman Ramirez-Talavera were granted remissions of their fines. The other two individuals, Juan Segarra-Palmer and Antonio Camacho-Negron were still imprisoned and still had fines. Antonio Camacho-Negron was already eligible for parole, but had violated his conditions of release. Therefore the President only offered him a remission of fine.\460\ The President commuted the sentence of Juan Segarra-Palmer so that he would be eligible for parole after serving 19 years in prison, which the President explained was consistent with the time served by the other prisoners with similar sentences.\461\

\455\ Exhibit 7--Letter from President Clinton to Representative Waxman.

\456\ Exhibit 10--Executive order of clemency.

\457\ Id.; Exhibit 7--Letter from President Clinton to Representative Waxman.

\458\ Exhibit 7--Letter from President Clinton to Representative Waxman.

\459\ Id.

\460\ Id.

\461\ Id.

The clemency was conditioned upon the prisoner's renouncing violence and agreeing to the standard terms of parole. Those terms included reporting to a probation officer, as well as restrictions on travel and association.\462\ The prisoners and their attorneys responded that the conditions were ``unfair'' and would impose too many restrictions on the prisoners once released.\463\ Jan Susler, attorney for the FALN prisoners, stated, ``[i]t's conditioned upon them complying with terms that would limit their ability to integrate themselves into the political process to shape the future of their country, because it restricts their travel and association.''\464\ The attorneys also complained that the prisoners were worried about the officials who would supervise their parole as most law enforcement agencies opposed the release of the FALN members.\465\ The fact that the prisoners would complain about being subject to the same rules as all other parolees when their sentences were reduced by dozens of years is incredible. Their statements show that they still do not appreciate the criminality of their acts, and still believe that they were persecuted solely for their political beliefs.

\462\ ``Conditions of Release' Department of Justice production 002003. (Exhibit 77).

\463\ Lawyers for Puerto Rican Prisoners Call Clinton's Offer Unfair, Associated Press (Sept. 3, 1999).

\463\ Id.

\464\ Id.

The month-long deliberations on accepting clemency brought to light one of the original issues with the request for clemency, that the prisoners refused to submit their own petitions. According to the Pardon Attorney, the rule that prisoners submit their own petitions was to be sure that they desired the relief. As a consequence of allowing Ofensiva '92 to submit the petitions, the White House could not be sure that the prisoners would accept the grants of clemency. The lengthy deliberation on the offer forced the President to demand that the prisoners accept the offer by a date certain, September 10, 1999, or forfeit the grant altogether.\466\ In addition, the prisoners were required to sign what amounted to requests for clemency, even though they were after the fact.\467\ Ultimately, two of the prisoners did not accept the grants of clemency, Oscar Lopez Rivera and Juan Segarra-Palmer. The other prisoners waited until September 7, 1999, to accept the President's offer.\468\

\466\ Letter from Dawn Chirwa, Associate Counsel to the President, to Jan Susler, attorney for clemency grantees (Sept. 3, 1999). White House production CL 15896-15897. (Exhibit 78).

\467\ Id.

\468\ Department of Justice production 001974-001990. (Exhibit 79).

Once the prisoners accepted the commutations, their attorney, Jan Susler, stated, ``[w]e think this is an unprecedented, historic moment that the President of the United States could recognize that men and women who have dedicated their lives to the freedom of their country deserve to be free . . . to participate in the political, legal process to shape the future of their country.''\469\ Through the act of commutation the President erased the facts of their convictions and transformed these terrorists into honorable freedom fighters.

\469\ 12 Puerto Rican Nationalists Agree to 'Unprecedented' Clemency Condition, CNN.com, Sept. 8, 1999.

IV. The Sentences Were Fair

Supporters of clemency for the 16 Puerto Rican terrorists have argued that their sentences were disproportionately long. While the President may grant clemency for any reason, it appears that this, the most substantive publicly-advanced justification for granting clemency, was flawed. The President, in a letter dated September 21, 1999, to Representative Henry Waxman, ranking minority member of this Committee, stated that ``. . . the prisoners were serving extremely lengthy sentences--in some cases 90 years--which were out of proportion to their crimes.'' \470\ The President has also stated that the terrorists ``had all served sentences that were considerably longer than they would serve under the sentencing guidelines which control federal sentencing now.'' \471\ These arguments, however, do not appear to be true.

\470\ Exhibit 7--Letter from President Clinton to Representative Waxman at 2.

\471\ President William J. Clinton, press conference (Sept. 9, 1999).

As Timothy McGrath, the interim Staff Director of the U.S. Sentencing Commission recently informed this Committee: ``[W]e estimate that the federal sentencing guidelines generally would call for sentences as long as or longer than those actually imposed, if the defendants had been sentenced under current law.'' \472\ According to the Commission, applying the sentencing guidelines to offenses analogous to those committed \473\ would result in sentences of 30 years to life for the nine Puerto Rican terrorists convicted of seditious conspiracy in the Northern District of Illinois, and in sentences which would be 30 years up to the functional equivalent of life for the remaining terrorists who were in prison at the time of the clemency offer.\474\ Addressing this point, the Commission found:

\472\ Exhibit 3--Letter from Timothy B. McGrath to Chairman Dan Burton at 9.

\473\ There is no Federal sentencing guideline for the offense of seditious conspiracy.

\474\ Id. at 1-2. Terrorists Antonio Camacho-Negron, Roberto Maldonado-Rivera, and Norman Ramirez-Talavera were not included in the Sentencing Commission's analysis, as each had completed their prison terms when President Clinton offered clemency. Id. at fn. 1.

In considering applicability of the current Federal Sentencing Guidelines to the 12 defendants sentenced in the Northern District of Illinois, we thought it most likely that a court would use one of two approaches to guideline application. Both of these approaches would result in a guideline range of at least 360 months to life (and, in the case of the approach described below using the Treason guideline, Sec. 2M1.1, a guideline sentence of life imprisonment) that would permit a judge to impose a life sentence for those nine defendants convicted of a violation of 18 U.S.C. Sec. 924(c).\475\ The other three defendants not convicted of a section 924(c) violation could have received a sentence amounting to the functional equivalent of life imprisonment, and would have been required to receive a sentence of at least thirty years under the guidelines, in our estimation. In estimating

the guideline sentence for defendant Palmer sentenced in the district of Connecticut, we applied the Robbery sentencing guideline with applicable enhancements and concluded that the defendant would have been subject to a guideline sentence of life imprisonment. However, because none of the counts of conviction permit an actual life sentence, the guidelines would direct the court to impose the statutory maximum term of imprisonment on each count and run the sentences consecutively, in order to achieve the functional equivalent of a life sentence.\476\

\475\ ``The following defendants were convicted of violations of 18 U.S.C. Sec. 924(c) and, accordingly, could receive sentences of life imprisonment under the current version of that statute: Elizam Escobar, Ricardo Jimenez, Oscar Lopez-Rivera, Adolfo Matos, Dylcia Noemi Pagan, Alicia Rodriguez, Ida Luz Rodriguez, Luis Rosa, and Carmen Valentin.'' Id. at fn. 2.

\476\ Id. at 1-2.

Applying the sentencing guideline for the crime of treason,\477\ the guidelines would require that life sentences be imposed on all 13 terrorists, with statutory maximum sentences for all other counts running consecutively with each other and with the life sentences. The Commission stated that applying the sentencing guidelines for treason would be appropriate based on the facts of the case:

\477\ In his letter, McGrath stated that ``[i]t is our opinion that a court reasonably could conclude that the Treason guideline, USSG Sec. 2M1.1(a)(1), is sufficiently analogous to the offense of conviction of seditious conspiracy charged in these cases. We find strong support for this conclusion based on the fact that, in a factually and legally analogous case involving the bombing of the World Trade Center, the district court for the Southern District of New York made a similar determination, and this decision was recently affirmed by the U.S. Court of Appeals for the Second Circuit.'' Id. at 2-3 (citing *United States v. Rahman*, 1999 WL 626631 (2d Cir., Aug. 16, 1999)).

Because the object of the FALN conspiracy, and the conduct alleged as part of the conspiracy, amounted to an avowed intent by the members of the conspiracy to wage war against the United States, a court could appropriately find that the most analogous guideline is USSG Sec. 2M1.1(a), Treason. Applying that guideline based on the court determination that the underlying conduct amounts to waging war against the United States, a base offense level of 43 is mandated under USSG Sec. 2M1.1(a)(1). See *United States v. Rahman*, -- F. 3d ----, 1999 WL 626631, at *55 (2d Cir. Aug. 16, 1999) (concluding that treason by waging war is appropriately analogous to offense of seditious conspiracy by levying war; conviction for seditious conspiracy was based on planned bombing of tunnels in New York).\478\

\478\ Id. at 3.

The Commission also found that no mitigating adjustments would be appropriate. With respect to mitigating adjustments based on the role of the offender in the conspiracy (USSG Sec. 3B1.2), the Commission found that ``a court could not grant a downward adjustment for mitigating role unless the particular defendant met his or her burden of proving that he

or she was 'substantially less culpable than the average participant.' '' \479\ Since the defendants chose not to participate in their trial, the applicability of this mitigating adjustment is doubtful. Likewise, with respect to a mitigating adjustment based on remorse (USSG Sec. 3E1.1), the Commission stated that ''[b]ecause the defendants went to trial and did not express remorse, we are aware of no basis for granting this reduction.' ' \480\

\479\ Id. at 4.

\480\ Id. at 4.

Clemency supporters who testified at this Committee's September 21, 1999, hearing compared the sentences of the 16 Puerto Rican terrorists with sentences imposed for other crimes thought to be more serious than seditious conspiracy. The Reverend Thomas E. Dipko, testifying on behalf of the General Synod of the United Church of Christ, stated:

We agree with President Clinton, Amnesty International, and numerous voices of conscience at home and abroad, who note that in comparison with the seven to twenty year sentences generally served by people actually convicted of murder in our nation, the more than 1,000 years of incarceration imposed on these men and women, averaging over 65 years in prison for each, constitutes excessive punishment disproportionate to the crimes of which they were found guilty.

Also, Harry Barnes, director of the Conflict Resolution Program at the Carter Center, in a letter to Chairman Burton of this Committee dated October 15, 1999, compared the sentences of the 16 terrorists to: (1) the 'average maximum sentence for murder' in Federal courts in 1980 (approximately 10 years); (2) the 'average maximum sentence for murder' in Federal courts in 1997 (approximately 12 years); and (3) the 'average maximum sentence for murder' in State courts in 1997 (approximately 22 years).\481\

\481\ Letter from Harry Barnes, director, Conflict Resolution Program, the Carter Center, to Dan Burton, chairman, Committee on Government Reform (Oct. 15, 1999). (Exhibit 80).

Seditious conspiracy and murder, however, are not equivalent crimes. McGrath, in his October 26, 1999, letter addressed the Carter Center's comparison:

The completed criminal conduct of the FALN defendants may not have resulted in murder, but the additional planned conduct certainly threatened the lives of many persons and, more generally, sought to oppose the United States government by force and violence. Thus, from a just punishment perspective, it is not at all clear that the FALN sentences were disproportionate to the seriousness of the crimes.\482\

\482\ Exhibit 3--Letter from Timothy B. McGrath to Chairman Dan Burton at 8-9.

The implication that the sentences of up to 90 years imposed on the FALN terrorists were unusually long as compared with other Federal sentences is further belied by Bureau of Justice Statistics sentencing data. At the end of fiscal year 1998, there were 74 offenders in Federal prison who had been sentenced to determinate sentences greater than 100 years prior

to enactment of the Sentencing Reform Act of 1984, and 578 offenders who had been sentenced to life imprisonment under the old law. Overall, at the end of fiscal year 1998, there were 115 offenders in Federal prison serving determinate sentences greater than 100 years, 2,040 offenders serving Federal life sentences, and 7 offenders on Federal death row.\483\

\483\ Federal Justice Statistics Resource Center, ``Dataset: Population of offenders in Federal Prison at fiscal year-end, 1998,' '(viewed Oct. 26, 1999). .

In his letter to Representative Waxman, the President also contrasted the sentences of the prisoners in question with that of Jose Solis Jordan, another Puerto Rican terrorist who was sentenced on July 7, 1999, to 51 months in prison for the attempted bombing of a Marine recruiting center in Chicago.\484\ Unlike the 16 Puerto Rican terrorists, who were convicted on multiple charges related to the FALN's terrorist campaign in the early 1980's, Solis Jordan was tried on charges related to a single attempted bombing.\485\ Solis Jordan was ultimately convicted on four counts: \486\ (I) conspiracy to destroy Federal property by fire or explosive; \487\ (II and III) attempted destruction of Federal property by fire or explosive; \488\ and (IV) illegal possession of explosives.\489\ The fact that Solis Jordan was not prosecuted for seditious conspiracy, and not sentenced under the guideline for terrorism,\490\ does not suggest that the sentences imposed on his predecessors in terror were in any respect unjust.

\484\ Exhibit 7--Letter from President Clinton to Representative Waxman at 2.

\485\ Neil Gallagher, Assistant Director of the National Security Division of the Federal Bureau of Investigation, testified at this Committee's Sept. 21, 1999 hearing that the 1992 bombing for which Solis Jordan was convicted was designed to gauge the response of the Puerto Rican people to the resumption of pro-independence terrorism. Solis Jordan was not charged with seditious conspiracy.

\486\ U.S. v. Solis Jordan, Docket No. 97-CR-814, (N.D. Ill., 1999). Amended Judgment and Commitment Order, issued Sept. 3, 1999

\487\ 18 U.S.C. Sec. 371.

\488\ 18 U.S.C. Sec. 844(f).

\489\ 18 U.S.C. Sec. 5861(d).

\490\ U.S. Sentencing Commission, 1998 Guidelines Manual, Sec. 3A1.4.

V. The Faln and Macheteros Terrorists Are Strange Candidates for Clemency

As the Justice Department itself noted, commutations of sentence are very rarely granted; it is an extraordinary remedy.\491\ Since President Clinton took office, he had granted only 3 commutations of sentence out of 3,042 requests.\492\ In each of those three instances, the length of the sentence commuted did not compare to the sentences being served by the FALN and Macheteros terrorists. The first commutation, in 1994, was of a hog farmer in Nebraska who had been convicted of perjury in bankruptcy proceedings.\493\ The farmer was sentenced to 5 months prison, 3 years supervised release, and 5 months home confinement.\494\ The President commuted his 5 month sentence after the farmer had served 4 months and 25 days, and removed the home detention requirement.\495\

\491\ ``The Executive Clemency Process'' Department of Justice

production 1040586-1040591, at 590.

\492\ Exhibit 25--Chart, ``Presidential Clemency Actions by Administration.'' Figures include the first 6 months of fiscal year 1999.

\493\ Exhibit 1 at 000735.

\494\ Id.

\495\ Id. at 000750.

President Clinton later commuted the sentence of a woman who was convicted of conspiracy to distribute cocaine and sentenced to 2 years and 9 months.\496\ She was scheduled to be released on May 27, 1995, when Clinton commuted her sentence to time served on April 17, 1995, sparing her a little less than a month longer in prison.\497\ The Pardon Attorney explained that the woman had withdrawn from drug activity prior to her trial and the President felt that she had served enough time.\498\

\496\ Id. at 000739.

\497\ Id. at 000751.

\498\ Committee Interview with Roger Adams, Pardon Attorney, Sept. 18, 1999.

The third sentence commuted by President Clinton was that of a man convicted of marijuana charges. The Pardon Attorney explained that the man had cooperated with the U.S. Attorneys Office prosecuting the case, and in turn was supposed to get a favorable recommendation on sentencing.\499\ Due to an error on the part of the U.S. Attorneys Office, the recommendation was not filed on time. The man commenced his sentence of 5 years and 11 months on December 3, 1991 and was scheduled for release on November 1, 1996.\500\ The President commuted his sentence to time served on August 21, 1995, releasing him 1 year and 2 months early.\501\

\499\ Id.

\500\ Exhibit 1 at 000752.

\501\ Id.

In comparison, the FALN and Macheteros terrorists were released after serving 19 years on their sentences ranging from 35 to 90 years.\502\ The initial commutations were of a completely different nature than the FALN and Macheteros commutations, and the presence of remorse and cooperation provided a justification for the grant of clemency. The members of the FALN and Macheteros terrorist groups who were granted clemency showed none of those virtues. Some of them may well have been exemplary prisoners.\503\ However, they never took responsibility for what they did and, in fact, most of them still call themselves ``political prisoners'' and blame the government for what they did. Furthermore, the President granted them clemency as a group. It is troubling to the Committee that some might read President Clinton's grant of clemency as validating the actions of the FALN and Macheteros terrorist groups, or at the least being lenient toward them.

\502\ Exhibit 7--Letter from President Clinton to Representative Henry Waxman. Juan Segarra-Palmer's sentence was commuted so that he would not be released until he served 19 years. He was originally sentenced to 55 years in prison.

\503\ There is evidence in the record of good conduct during their period of incarceration (in addition to evidence, in some of their cases, of bad or illegal conduct).

a. criteria for clemency

Generally, when considering commutations, the Justice Department looks at several factors: ``disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, e.g., cooperation with investigative or prosecutive efforts that has not been adequately rewarded by other official action.''\504\ In addition, whether the petitioner is eligible for parole is taken into account, which would be another remedy available.\505\ Other factors that one would look into when considering clemency would be the type of offense and whether the petitioner accepted responsibility and showed remorse for his actions.\506\ When looking at remissions of fines, ``the ability to pay and any good faith efforts to discharge the obligation are important considerations,' along with ``satisfactory post-conviction conduct.''\507\

\504\ Exhibit 26--U.S. Attorneys Manual.

\505\ Id.

\506\ Id.

\507\ Id.

In the case of the FALN and Macheteros clemency, all of the prisoners granted commutations by the President either were already eligible for parole, or soon would be. The majority of them refused even to apply for parole.\508\ The prisoners do not appear to meet any of the other criteria that the authorities are supposed to examine to determine eligibility. Using today's sentencing guidelines, the U.S. Sentencing Commission determined that the sentences imposed on the FALN and Macheteros terrorists were not disparate or unduly severe.\509\ According to the prisoners' records provided by the Department of Justice, none of the prisoners suffered from a critical illness or old age. In addition, the FBI testified before the Committee that none of the prisoners had cooperated with law enforcement.\510\ After reviewing the information available on the prisoners and speaking with the relevant authorities, the Committee was left puzzled about the grant of clemency.

\508\ Oscar Lopez Rivera, Ricardo Jimenez, Alejandrina Torres, Elizam Escobar, Carmen Valentin, Adolfo Matos, Edwin Cortes, and Ida Luz Rodriguez all refused to apply for parole. Sentence monitoring computation data. Department of Justice production at 120015, 020022, 100011, 010019, 080010, 030026, and 110013.

\509\ See discussion supra part V.

\510\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (1999) (testimony of Neil Gallagher, Assistant Director for National Security, Federal Bureau of Investigation).

b. the violent nature of those offered clemency

In discussing the grant of clemency to the FALN and Macheteros members, the White House made an effort to portray those who were offered clemency as non-violent offenders. The mantra repeated by the White House was that the individuals offered clemency were not convicted of bombings that directly caused the death of any person. This suggested that they were unfairly categorized as violent through guilt by association.

This is not the case. The individuals granted clemency were violent people committed to the use of violence to win independence for Puerto Rico.

When considering a commutation of sentence, one would hope that the Department of Justice and the President would look to whether it was safe to put an individual back into society; of foremost concern should be public safety. Generally, in making a determination, the Justice Department should look at the individual's conduct in prison, statements the prisoners have made, and whether law enforcement agencies have concerns. In the case of the FALN and Macheteros prisoners, it appears that their violent histories were ignored.

1. Present day threats

In September 1999, the Attorney General released a ``Five-Year Interagency Counterterrorism and Technology Crime Plan.'' \511\ The plan was released the same month as the FALN and Macheteros terrorists were released from prison. In a section of the Attorney General's report discussing the threat posed from domestic terrorists, she writes:

\511\ Five Year Interagency Counterterrorism and Technology Crime Plan, September 1999. Department of Justice production 10140039-10140136.

Puerto Rican terrorist groups, such as the Fuertas [sic] Armadas de Liberacion Nacional Puertorriquena [sic] (FALNP) and the Ejercito Popular Boricua Macheteros (EPB-Macheteros), are an exception and represent an on-going threat. They have previously used violence in an attempt to achieve independence for Puerto Rico. In an eleven-year span, Puerto Rican terrorists were responsible for more than 100 bombings and arsons, in both Puerto Rico and on the U.S. mainland. Factors which increase the present threat from these groups include renewed activity by a small minority advocating Puerto Rican statehood, the 100-year anniversary of the U.S. presence in Puerto Rico, and the impending release from prison of members of these groups jailed for prior violence.\512\

\512\ Id. at 10140050 (emphasis added).

Even as the prisoners were being released, the Justice Department acknowledged that such release increased the threat of violence from the FALN and Macheteros.

In testimony before the Committee, Neil Gallagher, FBI Assistant Director for National Security testified that the FBI believed that the release of the prisoners would provide a ``psychological or operational'' benefit to the two terrorist organizations.\513\ Gallagher explained that the FALN and Macheteros continue as terrorist organizations and to place one of their imprisoned ``comrades'' back into their midst, would give the organization a boost.\514\ Gallagher used the example of the Macheteros' fugitive leader Filiberto Ojeda Rios, who, on September 13, 1999, issued a communique warning the U.S. Navy not to resume the use of a range on the island of Vieques, Puerto Rico.\515\ The communique warned that the Macheteros ``would not remain with their arms crossed.'' \516\ Gallagher made clear that the FBI had given the Justice Department its warnings and opinion on the release of the FALN and Macheteros prisoners on numerous occasions.\517\

\513\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (1999) (testimony of Neil Gallagher, Assistant Director for National Security,

Federal Bureau of Investigation).

\514\ Id.

\515\ Id.; see also Appendix II, letter from Dan Burton, chairman, Government Reform Committee, to Janet Reno, Attorney General (Oct. 19, 1999) (letter discusses the danger to civilians protesting on the island of Vieques).

\516\ Id.

\517\ Id. The FBI also noted in a draft, unsent letter to House Judiciary Committee chairman, Henry Hyde, that, ``[a]s the request for pardons had been pending since 1994, the FBI was unaware that any such commutation of sentences was actually being contemplated or imminent.'' Exhibit 54--Letter from Louis J. Freeh, Director, FBI, to Henry Hyde, chairman, House Judiciary Committee (undated).

2. Violent escapes planned by the FALN prisoners

a. Escape plan of Oscar Lopez Rivera

Between mid-1983 and May 1986 several FALN members, a group of prisoners, and former prisoners from Leavenworth conspired to escape from Leavenworth. The mastermind of the plan was Oscar Lopez Rivera, who declined President Clinton's offer of clemency. At the time of the conspiracy, Lopez was incarcerated in Leavenworth Penitentiary. The government learned of the conspiracy through an inmate at Leavenworth and soon began monitoring the efforts of Lopez Rivera and his co-conspirators both inside and outside of prison.

While in prison, Lopez boasted that he was the Chicago leader of the FALN in a discussion with other inmates.\518\ Lopez said that, ``he believed the only way he could win independence for Puerto Rico was by engaging in violent acts against private businesses and against U.S. government installations.'' \519\ He explained that ``his people'' lived in Chicago, and that he communicated with them through visits, legal mail and coded telephone calls.\520\ In the same conversation, he urged the other inmates to begin their own campaign of armed struggle.\521\ This discussion led the participants to conclude that it would be difficult to conduct an armed struggle while still in prison, thus the participants began to formulate an escape plan.\522\

\518\ Brief for the United States, U.S. v. Delgado, Nos. 88-1434, 88-1450, and 88-1476, at 5 (7th Cir.).

\519\ Id. (emphasis added).

\520\ Id.

\521\ Id. at 6.

\522\ Id.

Several weeks after the first meeting, Lopez met with one of the participants and informed him that the FALN had given him permission to participate in an escape plan and would provide a helicopter, pilot, and some of the materials needed.\523\ The plan was contingent upon one of the Leavenworth participants being released from prison, which was scheduled within a year.\524\ In the meantime, between late 1984 and mid 1985, the participants met on a daily basis to discuss their plan. The final plan called for a helicopter to be flown into the Leavenworth prison yard.\525\ Guards would be held off with gunfire, and the helicopters at nearby Fort Leavenworth were to be disabled with explosive devices.\526\ Once out of prison, the participants would accumulate funds through robbery or counterfeiting.\527\ With the funding, they ``intended to buy various explosives and firearms to use to blow up buildings and kill people.'' \528\ Lopez promised to bring FALN members to help train the men in their ``armed struggle.'' \529\

\523\ Id.
\524\ Id.
\525\ Id. at 7.
\526\ Id.
\527\ Id.
\528\ Id. (emphasis added).
\529\ Id.

Several months later, Lopez learned that a leading figure in the ``armed struggle'' had been arrested, and therefore the FALN would not be able to provide the weapons and explosives.\530\ The co-conspirators then went to another inmate with a list of weapons they would need to get out: ``fragmentation grenades, smoke grenades, phosphorous grenades, eight M-16 rifles, two silencers, 50 pounds of plastic C-4 explosives, eight bulletproof vests, ten blasting caps to use with plastic explosives, and 100 30-shot clips for use with automatic weapons.'' \531\ The smoke grenades were to be used in the yard to obstruct the guards' vision, while the fragmentation grenades ``were going to be used to throw against the guard tower.'' \532\ Ostensibly, there would be guards in the guard tower who would either be killed or seriously wounded by a weapon such as a fragmentation grenade.

\530\ Id. at 7-8.
\531\ Id. at 8 (emphasis added).
\532\ Id.

After some time, Lopez' contacts outside of the prison made arrangements to make an initial purchase of some of the C-4 explosives.\533\ Because there was an informant working within the co-conspirators, the FBI became involved and an agent posed as a weapons dealer.\534\ The FBI agent sold \$5,000 worth, or 30 sticks, of C-4 to the outside contact of the FALN.\535\ In mid-May 1985, Lopez was given details of the weapons purchased.\536\ Lopez told his co-conspirators that he thought the ``weapons dealer'' was giving them a bad deal, but that ``his people'' would ``take care of'' the weapons dealer if he had set them up.\537\

\533\ Id. at 11.
\534\ Id.
\535\ Id. at 15-16.
\536\ The ``weapons dealer'' was actually an undercover FBI agent.
Id. at 16.
\537\ Id. (emphasis added).

As time passed, numerous FALN members across the country were captured. Lopez was getting and sending information through his attorneys and other visitors who would communicate through written notes taken from the prison by Lopez' attorneys or paralegals.\538\ Lopez had to change his escape plans several times and informed his co-conspirators on the outside, through a letter smuggled out by his attorney, that the FALN would not be able to provide the weapons or helicopter training.\539\

\538\ Id. at 17.
\539\ Id.

In May 1986, Lopez sent a letter to a co-conspirator (at that time the co-conspirator was cooperating with the government), giving him the name of a new weapons dealer.\540\ The co-conspirators, including Lopez, agreed that if the weapons dealer did not meet their price, he should be killed

and the weapons stolen.\541\ At the end of May, Lopez was visited by an FALN contact, and the two, communicating through writing, discussed the escape attempt.\542\ After the visit, the government seized the communications and foiled the plot.\543\

\540\ Id. at 26.

\541\ Id.

\542\ Id. at 27.

\543\ Id.

Lopez and his co-conspirators were charged with:

Committing a multi-goal conspiracy to effect the escape of several inmates from the Leavenworth Federal Penitentiary.

Committing a multi-goal conspiracy to transport explosives with the intent to kill and injure people.

Committing a multi-goal conspiracy to use explosives to destroy government buildings and property.

Lopez' probation officer's assessment of him was:

His level of remorse, rehabilitation and positive regard for this court's process is minimal, if not nonexistent. He demonstrates a sustained, consistent commitment to the use of violence and weapons. He will use any means to gain freedom for the purpose of undermining the principles of the United States government. He has already determined that human life is expendable for this purpose. He will not be an inactive influence on the FALN while incarcerated.\544\

\544\ Presentence report of Oscar Lopez at 120042.

The Government stated in its sentencing recommendation:

Oscar Lopez is beyond rehabilitation. He has shown nothing but contempt for the judicial system and the lives of his fellow citizens. He has adopted a philosophy to rationalize and justify every act of violence and criminality he commits. In this regard, he is a particularly dangerous individual whose commitment to his cause guarantees a continued and real threat to the lives and well being of all persons who find themselves in his way.\545\

\545\ Id. at 120054.

In February 1986, Lopez was interviewed regarding his participation in the ``struggle'' for Puerto Rico's

independence:

I would consider myself a freedom fighter. Ah, it could be argued that somebody's terrorist is somebody else's freedom fighter. Our struggle is a just struggle, and because it's a just struggle, we have the right to wage it by any . . . ah . . . means necessary, including armed struggle. . . . We can anticipate more violence. People are not going to sit idle and, ah, wait for the oppression to continue. Ah, as long as the conditions do not improve ah, yes there is that, ah, outlet for violence. A bombing or any type of armed

action is worth study. It's not something that, ah, is, is spontaneous. Ah, all the factors, human lives are taken into consideration.\546\

\546\ Id. at 120064.

Lopez was found guilty and sentenced to 15 years, to run consecutively with the prison sentence he was already serving.

When testifying before the Committee, the Assistant Director for Correctional Programs at the Bureau of Prisons, Michael Cooksey, spoke about Oscar Lopez. Cooksey testified that Oscar Lopez' escape plans were indeed violent.\547\ In fact, Oscar Lopez was considered one of the most dangerous criminals in the Bureau of Prisons system, and was sent to the highest security prison in the United States.\548\ During the hearing, the FBI, Bureau of Prisons, and Justice Department all testified that they had never told the White House that Oscar Lopez was not violent.\549\ Nevertheless, the White House continued to represent to the public that the individuals granted clemency had never been involved in violent acts.

\547\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (1999) (testimony of Michael B. Cooksey, Assistant Director for Correctional Programs, Bureau of Prisons).

\548\ Lopez was incarcerated at both the Marion and Florence, CO maximum security facilities. Id.

\549\ Id. (testimony of Michael B. Cooksey, Assistant Director for Correctional Programs, Bureau of Prisons; testimony of Neil Gallagher, Assistant Director for National Security, Federal Bureau of Investigation; testimony of Jon Jennings, Acting Assistant Attorney General for Legislative Affairs).

b. Escape plans of Ricardo Jimenez

Officers at the Federal Correctional Institution in Otisville, NY were conducting a routine ``shakedown'' of the prisoners cells on October 11, 1985. When they searched FALN member Ricardo Jimenez' cell they found the following:

Exhibit 1: a plastic architectural drawing (3"5") which depicts the entire Otisville facility as seen from the air; appears to have been produced in UNICOR; found taped to bottom of inmate's desk.

Exhibit 2: FALN-related material (three newspapers).

Exhibit 3: two informational fliers concerning individuals of Puerto Rican descent currently incarcerated at various facilities.\550\

\550\ Memorandum from Jerry Brookmole, Captain to Ken Willicki, SIS (Oct. 21, 1985). Department of Justice production 10180032-10180035, at 10180032.

Jimenez was present during the search, and when he became aware that the officers had found the materials, he attempted to flee.\551\ As he was already in prison, he did not get far.

\551\ Id

Through informants, the officers at Otisville were able to determine that the FALN was planning to break into the prison to free Jimenez and ``pre-trial Puerto Ricans'' who were being held at Otisville at the time.\552\ Jimenez had paid another prisoner who was able to leave the prison on furlough to take information outside the prison such as ``site plans of the institution layout; information about the perimeter security;

and details of perimeter security vehicle activity.' \553\ A confidential informant supplied officials with the following details:

\552\ Id. at 10180033-10180034.

\553\ Id. at 10180033.

Twenty-five to Thirty (25 to 30) people will be involved, coming from the outside to implement the escape plan. They will approach from the road that leads from the sewage treatment plant. They will be heavily armed with automatic weapons, grenades, and dynamite. Half of the group will come to the front of the parking lot to create a diversion. The other half will come up from the sewage treatment plant area and blow a hole in the fence. The primary target will be to get Jimenez and the Puerto Ricans out of segregation. It will be a total takeover and all other inmates who wish to break for the fence will be permitted to do so.

Plans of the institution have already been sent to New York where the weapons and individuals are located. The woods leading to the back of Units 1, 2, and 3 have already been staked out three to six weeks ago. The perimeter vehicles will be taken out immediately because they know this is the only fire power we have.

There is a hit list established identifying particular staff who they will kill on sight if seen. The informant knew of only one staff member on the list, namely, Lt. Asuega.\554\

\554\ Id. at 10180034.

Prison authorities confirmed that a guard checking the prison perimeter approximately 6 weeks earlier had reported people with flashlights in the woods behind the prison.\555\ The following day, guards had found footprints in the area.\556\

\555\ Id.

\556\ Id.

It is apparent from the description of both the Lopez and Jimenez escape attempts that the two remained in contact with FALN members outside of prison and were kept abreast of current FALN events. Their escape plans were extremely violent and did not take into account possible loss of life, and in fact, planned on it. Lopez intended to attack the guard tower, and Jimenez had a ``hit list'' for guards.

c. the faln and macheteros members offered clemency expressed no remorse, nor did they exhibit any signs of rehabilitation

An important aspect of any grant of clemency should be the remorse or repentance of the petitioner for the crimes he committed. There is no evidence of repentance with the FALN and Macheteros terrorists. The Office of the Pardon Attorney even worked with supporters of clemency to find remorse on the part of the prisoners. During a November 5, 1997, meeting with Representatives Gutierrez, Serrano, and Velazquez, Deputy Attorney General Holder asked that they get a written statement from the prisoners on how they had changed and whether they were repentant.\557\ Five months later, OPA had not received any statement. Ultimately, Pardon Attorney Adams had to call Representative Gutierrez' office and request the

statement.\558\ Finally, on April 9, 1998, the Pardon Attorney spoke with Enrique Fernandez of Representative Gutierrez' office.\559\ Fernandez told Pardon Attorney Adams that the prisoners would ``send separate, though identical, statements.'' \560\ It is clear from the fact that the prisoners' statements were identical that the prisoners did not truly feel remorse. A group statement tends to defeat the idea of personal remorse or repentance. Fernandez also warned that the statement would probably not be what the Deputy Attorney General had asked for in his meeting:

\557\ Exhibit 47--Notes from Nov. 5, 1997, meeting between Deputy Attorney General Holder and Representatives Gutierrez, Serrano, and Velazquez.

\558\ Notes of telephone call from Roger Adams, Pardon Attorney, to Doug Scoffield, chief of staff to Representative Gutierrez (undated). Department of Justice production 1041926. (Exhibit 81).

\559\ Notes of telephone call from Roger Adams, Pardon Attorney, to Enrique Fernandez, staff to Representative Gutierrez (Apr. 9, 1999). Department of Justice production 1041899. (Exhibit 82).

\560\ Id.

It is unlikely to show ``repentance'' as Mr. Fernandez said the persons have said--and this may be the gist of the statement--that they cannot participate in the current political process of the U.S. with respect to its relationship to PR--although they have no quarrel with the U.S. Constitution and laws with respect to matters in the U.S. . . . Anyway, he said that his Congressman is very confident they will not ``do it again, bombs and stuff like that.'' \561\

\561\ Id.

In fact, the statement from the prisoners reflected no remorse, repentance or change in beliefs on the part of the FALN prisoners.\562\

\562\ Exhibit 49--Facsimile from Roger Adams to Dawn Chirwa, with attachment of statement from the prisoners (Apr. 21, 1998).

In their statement, the prisoners blamed the U.S. Government for their actions. Describing the decades of the 1970's and 1980's, the statement claimed:

During those years the criminalization of independence and systemic harassment of supporters of independence and their sympathizers was official government policy, out of which grew COINTELPRO. In Puerto Rico and the United States, the government targeted supporters of independence, including the unconstitutional practice of creating dossiers and conducting surveillance of over 100,000 innocent people, dubbed ``subversives,'' merely because they believed in independence. . . .

It is within this totality of circumstances, with all other avenues for exercising self-determination foreclosed, that a group of individuals decided to resort to exercise the right of self-determination due all nations, and, concretizing the right accorded by international law to all colonial subjects to use all means at their disposal, waged a struggle against colonialism.\563\

\563\ Id.

The letter acknowledges that the prisoners might now deign to participate in the political process to work toward independence for Puerto Rico. Yet the prisoners continue to refuse to acknowledge their personal participation and culpability. Many of the individual prisoners have made unofficial statements regarding their participation in the ``independence movement'' that tend to show that they have no remorse, and in fact continue to be proud of their actions.

1. Statements of Oscar Lopez

In the summer of 1995 Oscar Lopez made a statement for the use of ``Libertad!'' which was the publication of a group of pro-clemency supporters. Lopez wrote, ``I define myself as a Puerto Rican, with a right to struggle for the liberation and dignity of my people using any means necessary.''\564\ Later, in May 1998, Lopez was interviewed for the San Juan Star. Lopez told the reporter, ``I cannot undo what's done. The whole thing of contrition, atonement, I have problems with that.''\565\ He continued, ``I have no regrets for what I've done in the Puerto Rico independence movement. The onus is not on us. The crime is colonialism.''\566\ Lopez was asked whether he and his former ``comrades'' would accept a Puerto Rican plebiscite on the issue of Puerto Rican independence or statehood. He responded that they would accept a plebiscite, but would react violently if they found that it had been ``rigged against them.''\567\ However, Lopez added, ``[i]f annexation [statehood] is the answer, I would say there would be a good number of Puerto Ricans who would advocate and practice armed struggle.''\ Finally, if asked whether he would remain an active independentista if he were freed from prison, after a long pause Lopez responded, ``I cannot stop being a Puerto Rican. I cannot be anything but a Puerto Rican.''

\564\ Statements of the FALN and Los Macheteros members in Libertad!, a publication of the National Committee to Free Puerto Rican Prisoners of War and Political Prisoners (summer 1995) <http://www.prisonactivist.org/pubs/libertad/> (emphasis added).

\565\ Imprisoned FALN Leader Claims No Regrets, San Juan Star, May 10, 1998.

\566\ Id.

\567\ Id.

It is obvious that Lopez has no remorse for his actions, nor does he understand that his acts were wrong, not just legally but morally. The group to which he belonged detonated bombs around major metropolitan centers to draw attention to the group's beliefs. Those bombs caused the deaths of numerous people. He deserved to be in prison. However, true to his beliefs, Lopez refused to renounce violence or submit to the conditions of the President's offer of clemency, and rejected the offer.

2. Statements of Edwin Cortes

FALN member Edwin Cortes also wrote a summer 1995, statement for the Libertad! publication. In it he discusses his struggle on whether or not to apply for parole:

I originally considered appearing before the parole board, based in part on my discussions with other POWs and sectors of the independence movement who believe that parole should not be ruled out as a form of struggle in the campaign for our freedom. My intentions were to embrace all political/legal avenues available under international and US laws including Parole, Presidential Amnesty/Pardon/Commutation, the United Nations, OAS, the World Court, etc. [sic] in order to

become an active political subject in the campaign to free al [sic] Political Prisoners and Prisoners of War. The organizing work done around the Parole Board could also be part of a multi-prong political/legal strategy to expose the contradictory and politically biased parole process as it relates to political activists. As well as to organize, educate and mobilize our community toward the freedom of Political Prisoners and Prisoners of War.

I have an inalienable human right to rid my nation of colonialism, and remain committed to being a protagonist in the struggle for national independence and the freedom of all Puerto Rican patriots.\568\

 \568\ Statements of the FALN and Los Macheteros members in Libertad!, a publication of the National Committee to Free Puerto Rican Prisoners of War and Political Prisoners (summer 1995) <http://www.prisonactivist.org/pubs/libertad/>.

Again, his statements do not show remorse. Cortes insists that he is a ``political prisoner'' or a ``prisoner of war.'' What he does not take into account is that there was no war. The FALN conducted their own guerrilla actions in the United States. The FALN did not and still does not have the support of the majority of Puerto Ricans living in Puerto Rico.\569\ He and other members of the FALN and Macheteros continue to insist that they are not to blame for their own actions.

 \569\ In fact, less than 3% of Puerto Ricans voted for independence from the United States in the last plebiscite.

3. Statements of Adolfo Matos

After the FALN and Macheteros prisoners were granted clemency, the Bureau of Prisons began to review prior taped conversations of the prisoners. A correctional officer called an April 15, 1999, tape of FALN member Adolfo Matos to the attention of his supervisors because of the statements he made. Matos was speaking to a woman in Puerto Rico named ``Lydia':

Matos. To give my life for something I believe in, something that's not for personal gain. I liked helping people, anybody, you know. For the justice of my people. In this manner I get involved. And my desire has gotten stronger, to the point where I want to continue. Continue to fight and get involved with my people, because I love them.

Lydia. And what about what Carlos said? If the prisoners were to ask for a pardon, it would all be different. Are you willing to ask for a pardon?

Matos. No. I don't have to ask for forgiveness from anybody. Look it's like the song says . . .

Lydia. Aren't they recording?

Matos. No, I don't care, it's like that song by . . .

Lydia. Don't you feel ashamed of it?

Matos. No, no, no, my love, I have nothing to be ashamed of, or feel that I have to ask for forgiveness. I don't have to ask for forgiveness because my conscience is at peace with itself. You see, it's a question of rights[.] \570\

 \570\ Memorandum from J.M. Guerrero, correctional officer, Lompoc Penitentiary, to G. Bondurant, Special Investigative Agent (Sept. 7, 1999). Department of Justice production 10120001. (Exhibit 83).

It is vividly clear from his statements that Matos feels no

remorse for his action.

4. Statements of Antonio Camacho-Negron

Bureau of Prisons officials also reviewed the telephone calls of Macheteros member Antonio Camacho-Negron.\571\ After reviewing the calls, the officials found that the content of the calls were a ``good indication he is persistent with supporting his dissident cause.'' \572\ Officials called attention to one call in particular, where he had the following exchange with FALN attorney Jan Susler:

\571\ Memorandum from Jake Mendez, warden, FCI Allenwood, to David M. Rardin, Regional Director, Bureau of Prisons, with attachment (Sept. 8, 1999). Department of Justice production 10120012-10120013, at 10120012. (Exhibit 84).

\572\ Id.

Susler. During the conference we spoke about renouncing the violence.

Camacho. The circumstances have changed.

Susler. They agreed that they weren't going to go back to the armed struggle.

Camacho. We don't have to accept that in a written form. We cannot (politically) renounce the armed struggle totally.

Susler. Let's talk more about this when we meet again.\573\

\573\ Id. at 10120013.

In an August 25, 1999, telephone conversation, Camacho ``mentions the struggle his group is in and it could not continue unless the use of arms was employed.'' \574\ In earlier telephone calls, Camacho-Negron indicated that he would accept the President's offer of clemency if it was given without conditions.\575\ Finally, during an August 20, 1999 telephone conversation Camacho-Negron was discussing the \$100,000 fine he received when convicted for his activities relating to the Wells Fargo robbery. Camacho-Negron indicated that, ``he did not acknowledge the fine because of his political affiliation, and his stand against the government.'' \576\ After reviewing his statements, it is hard to imagine a poorer candidate for clemency. President Clinton did not offer to commute Camacho-Negron's sentence because he remains eligible for mandatory release, should he choose to abide by the conditions imposed. However, the President did offer to remit the fine, which Camacho-Negron rejected.

\574\ ``Investigator's Report Regarding Camacho-Negron.'' Department of Justice production 10120016-10120017, at 10120016. (Exhibit 85).

\575\ Id.

\576\ Id. at 10120017.

5. Statements of Ricardo Jimenez

FALN member Ricardo Jimenez accepted President Clinton's offer of clemency. After he was released from prison, he appeared on the political talk show, Meet the Press, on September 12, 1999.\577\ The host of the program asked Jimenez whether he had any regret or remorse for the crimes of which he had been convicted.\578\ Jimenez replied, ``I think basically what we have to know, that what we were charged with, if it was anybody else, would have served--would have served much, much less time. Those sentences would have not been consecutive the way they were. . . .'' \579\ When asked whether he had any remorse for the bombings, especially those in which people were

killed or injured, Jimenez responded, ``No. I think all precautions were taken--you know, to make sure that all human life was preserved. And in the end . . . the measures were not taken by the people who owned those establishments.'' \580\ It is clear that Jimenez, like the others, has no remorse for the FALN actions. What is even more disturbing is that he places the blame on the owners of the businesses bombed by the FALN. The bomb that exploded in Fraunces Tavern in January 1975 was set to detonate during the busy lunch hour, when the restaurant was most crowded. It is offensive that he blames the restaurant, and his comments show that he was a poor candidate for clemency.

\577\ Meet the Press (NBC television broadcast, Sept. 12, 1999).

\578\ Id.

\579\ Id.

\580\ Id.

6. The exception: Alberto Rodriguez

There is an exception to the lack of remorse on behalf of the FALN and Macheteros members. Alberto Rodriguez issued a statement in February 1995, renouncing the activities that led to his conviction. He stated:

I now recognize that many of the assumptions that guided my actions over twelve years ago were simply wrong. I sincerely believed that the majority of Puerto Ricans desired independence from the United States, and that the only thing keeping the island from achieving its independence was the power of the United States Government. . . .

I realize that violence to achieve independence is neither realistic nor right. . . .

Most specifically, I disregarded the consequences that my conduct would have had on others. I took violence lightly over a decade ago, and regret that. While all of the FALN bombings that were charged as part of the seditious conspiracy took place before I became involved, I take responsibility for my cavalier attitude towards violence and willingness to use it.\581\

\581\ ``Statement of Alberto Rodriguez'' (Feb. 2, 1995). Department of Justice production 005507-00512, at 00507-00509.

FALN member Carmen Valentin responded to Rodriguez' renunciation, stating, ``only a desperate, crazed person would take such steps.'' \582\ She added, ``I apologize for his lack of integrity, honesty, vision. This is unacceptable behavior. I do not wish to stand near him in this struggle and demand that he be dubbed a persona non grata in our movement for liberation and in our campaign for amnesty, freedom.'' \583\ It is clear from Valentin's statements in the spring of 1995, that she had no remorse for the crimes committed by FALN members, and in fact, had contempt for those that did express remorse.

\582\ Statements of the FALN and Los Macheteros members in Libertad!, a publication of the National Committee to Free Puerto Rican Prisoners of War and Political Prisoners (spring 1995) <http://www.prisonactivist.org/pubs/libertad/>.

\583\ Id.

Although it is not clear whether Alberto Rodriguez would have been the best candidate for clemency regardless of the campaign to grant clemency to the FALN members, at least he

recognized that his past actions were wrong and expressed remorse for his acts. The same certainly cannot be said for his fellow FALN members.

d. no cooperation was requested or offered from the faln and macheteros members

There are numerous unsolved crimes about which the members of the FALN and Macheteros terrorist organizations could have provided information. In addition to unsolved bombings that occurred in both the United States and Puerto Rico, there were numerous robberies that were attributed to the groups, but never proven. Just one example is the January 1975 bombing of the historic Fraunces Tavern in New York City that killed four people. The families of the victims would like to see someone punished for the heinous crimes committed. When asked about unsolved crimes attributed to the two terrorist groups, FBI Assistant Director for National Security, Neil Gallagher, mentioned that individuals associated with the Macheteros' \$7.2 million armored car robbery in Connecticut remained fugitives, in addition to open investigations of the more recent bombings in Puerto Rico.\584\

\584\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (1999) (testimony of Neil Gallagher, Assistant Director for National Security, Federal Bureau of Investigation).

During the hearing, Gallagher was asked whether any of the conditions of the grant of clemency included cooperating with law enforcement. He stated that the FBI was not asked whether it wanted to question the prisoners, and therefore never had the opportunity. It is of great concern to the Committee that there was absolutely no requirement that the prisoners speak to law enforcement regarding open investigations for which they may have had valuable information. At the very least, they could have provided some answers to the questions of the victims of FALN and Macheteros crimes. However, as with all of the other phases of this particular grant of clemency, the victims were never considered.

VI. The Clemency Decision and the U.S. Commitment to Fighting Terrorism

The decision to offer clemency to the 16 FALN and Macheteros terrorists has ramifications that go beyond the typical dangers posed by the release of violent criminals back into society. First, this is the first time in the history of the United States that clemency has been offered to such a large number of individuals who are all members of like-minded terrorist organizations. The President's failure to require cooperation to solve numerous unsolved murders, coupled with the failure to require any type of contrition by the individuals or the group, sends a message that an organization has received preferential treatment. This is troubling because terrorist organizations do not necessarily act in a rational manner and might indeed be encouraged by a group being singled out for preferential treatment. As Neil Gallagher, Assistant Director for National Security, Federal Bureau of Investigation, testified before the Committee on Government Reform on September 21, 1999: ``The challenge before us is the potential that the release of these individuals will psychologically and operationally enhance the ongoing violent and criminal activities of terrorist groups, not only in Puerto

Rico, but throughout the world.' ' \585\

\585\ Exhibit 17--Draft FBI statement.

A related concern is how this decision will impact our relations with foreign governments. Eliminating terrorist groups and initiatives requires foreign governments to cooperate with U.S. law enforcement initiatives. The decision to grant clemency to the FALN and Macheteros terrorists sends a clear message that our demands for severe punishment, and our willingness to mete out severe punishment, can be hollow. Of greater significance, it sends a message of encouragement to terrorists themselves. Although supporters of the clemency decision, and the President himself, often point to President Carter's decision to exercise clemency to individuals who attempted to assassinate President Truman and Members of Congress, this is hardly a good model to follow.\586\

\586\ The rationale for one of President Carter's grants of clemency was that the inmate had a terminal illness. There is no analogous situation with the 16 terrorists recently offered clemency.

Another area of concern is the intellectual inconsistency inherent in the rationale for the decision. When the United States decided to strike at the terrorist organization of Osama bin Laden, the President did not target only those proven to have committed acts of violence. He struck at the organization as a whole, and he presumably did so because all members were deemed to be responsible for the atrocities committed against others. Similarly, when Terry Nichols, the co-conspirator in the Oklahoma City bombing that killed 168 individuals, was given a life sentence without the possibility of parole, the President did not deplore the sentence. Thus, the White House has used a very different standard for the FALN terrorists than the standard used in statements or actions that are directed at other terrorist organizations.

Finally, this section draws attention to the very curious repatriation of terrorist Silvia Baraldini to Italy. This decision was finalized within 2 weeks of the decision to offer clemency to the 16 FALN members. This is particularly curious because Baraldini herself had been involved with the FALN cause and its members.

a. the international message

Simply put, the President's decision to release U.S. terrorists has seriously eroded this country's moral authority to require other countries to deal firmly with terrorist organizations. By offering the 16 FALN and Macheteros terrorists a lenient deal, the President has undercut our ability to require other countries to crack down on terrorist groups that threaten the safety of Americans at home and abroad. Once lost, it is difficult to recapture the moral high ground.

The U.S. Government spent approximately \$50 million in the 1970's and 1980's to put an end to FALN and Macheteros violence.\587\ Indeed, the convictions of those recently offered clemency led to the end of most of the FALN terrorist activities in the United States. The recent decision, however, sends a different message about terrorist organizations, particularly because the clemency appears to be directed more at a group than at individuals. As the FBI made clear in a written statement prepared for the Committee's September 21,

1999, hearing:

\587\ Interview with Marlene Hunter, Assistant Special Agent in Charge (San Juan, Puerto Rico), Federal Bureau of Investigation (Oct. 7, 1999).

The FALN and Macheteros terrorist groups continue to pose a danger to the US. Government and to the American people, here and in Puerto Rico. . . . The challenge before us is the potential that the release of these individuals will psychologically and operationally enhance the ongoing violent and criminal activities of terrorist groups, not only in Puerto Rico, but throughout the world.\588\

\588\ Draft statement of Neil Gallagher. (Exhibit 17).

In a statement made last year before the Senate Select Committee on Intelligence, FBI Director Freeh had this to say

about Puerto Rican terrorist groups:

Although the last terrorist incident involving Puerto Rican terrorist groups was a bombing in Chicago in December, 1992, these groups continue to be of concern. Between 1982 and 1994, approximately 44 percent of the terrorist incidents committed in the United States and its territories are attributed to Puerto Rican terrorist groups. Efforts are continuing to locate fugitives still at large from these incidents.

Puerto Rican terrorist groups believe the liberation of Puerto Rico from the United States justifies the use of violence to obtain that objective. These groups characterize their terrorism activities as ``acts of war'' against invading forces and, when arrested, they consider themselves to be ``prisoners of war'' who must be treated as such according to the Geneva Convention. Clandestine behavior and security are of utmost importance in these group's activities.\589\

\589\ Threats to National Security. Hearing before the Senate Select Committee on Intelligence, 105th Cong., 2nd Sess. (Jan. 28, 1998) (testimony of Louis J. Freeh, Director, Federal Bureau of Investigation).

It is particularly disturbing that the White House has not offered a response to this analysis. If the President was privy to information that casts doubt on this assessment, it should be shared with the public. In the absence of the White House addressing the FBI's concerns, however, Congress and the American people are left with the impression that the President simply ignored this concern.

Another matter of concern is the seeming confusion within the administration about whether the President's actions have any international ramifications. The following exchange between journalist Tim Russert and National Security Adviser Berger illustrates this point: \590\

\590\ Meet the Press (NBC television broadcast, Sept. 19, 1999).

Russert. The President did not seek your advice on this?

Berger. This is not--again, I do foreign policy. Puerto Rico is not an issue that comes within the jurisdiction of the NSC.

As is obvious from this exchange, Mr. Berger is attempting to convey the impression that the President did not seek his advice. Notwithstanding this public representation, in a handwritten note just 2 months before this exchange, the President asked Berger: ``What about the prisoners[?]'' \591\

\591\ Handwritten note from President William J. Clinton, to Samuel Berger, National Security Adviser. (Exhibit 86).

Notwithstanding Mr. Berger's attempt to either avoid the question or mislead the audience, Berger himself had stated the previous year: ``Terrorism is not just [a] law enforcement or domestic issue. It's a national security and foreign policy issue.'' \592\ Thus, there appears to be great confusion in the administration about whether terrorism within the United States has any international ramifications. When the political results for this administration are negative, Mr. Berger argues that domestic terrorism is not a matter within the jurisdiction of the National Security Council. When speaking under different circumstances, however, it appears that Mr. Berger's message could not be more different, and he clearly states that terrorism is a national security issue and it is a foreign policy issue. This vacillation sends an unfortunate message to terrorist organizations and to the foreign governments that must respond to terrorist organizations. It also makes it appear that the U.S. Government somehow distinguishes U.S. terrorists from other nations' terrorists.

\592\ Meet the Press (NBC television broadcast, Sept. 19, 1999).

b. an inconsistent policy on dealing with terrorists

At the time that the controversy over the clemency offers was at its most pronounced, National Security Adviser Sandy Berger appeared on television to defend the President's decision. Nowhere is the inconsistency in the administration's policy more apparent than in his statements. After pointing out that ``these people have served between seventeen and nineteen years,'' and after misrepresenting that they were not ``personally involved in violence,'' Mr. Berger says that he finds the President's explanation ``perfectly reasonable.'' Mr. Berger then goes on, however, to explain that the administration's record against terrorists ``is the strongest of any President in history.'' To establish this claim, he points to the apprehension of the World Trade Center bombers and the fight against those who allegedly destroyed the two United States embassies in Africa in 1997. Thus, he seeks credit for a strong response against the terrorist organizations that have recently committed acts of violence and he downplays the need for a harsh response where the FALN is concerned.

This approach to the FALN matter was used by the President when he stated that none of the FALN terrorists ``had been convicted of doing bodily harm to anyone.'' \593\ Yet this was far from the standard used when dealing with the terrorist activities of Osama bin Laden or the World Trade Center bombers. In the case of the U.S. strike against Osama bin Laden, military aircraft dropped bombs specifically to kill members of the terrorist organization. There was no constitutional due process, nor was there an attempt to target only those who had committed violent acts. Rather, the

President ordered a raid designed to disable the organization by killing its members. On the other hand, the FALN and Macheteros terrorists did receive due process of U.S. law and were sentenced accordingly. There appears to be no reason to undercut what the courts did, particularly where the President believes that, in other circumstances, U.S. legal due process is irrelevant.

\593\ President William J. Clinton, press conference (Sept. 9, 1999).

In the case of the prosecutions and convictions of the World Trade Center bombers, some of those given lengthy prison sentences did not literally commit acts of violence. For Congress, for most Americans, and certainly for international observers, it is difficult to understand why FALN terrorists should not serve their full sentences, when it is acceptable to deploy missiles against the followers of Osama bin Laden or seek long sentences for some of the World Trade Center conspirators. This is particularly true given the fact that none of the 16 terrorists offered clemency showed any contrition for their activities, nor did they provide any cooperation to solve the numerous crimes that remain unsolved.

In short, the President appears to be using a standard to justify his decision to offer clemency to the 16 terrorists that has not been used with other terrorist organizations. Leaving aside the mischaracterization as to whether these terrorists are actually non-violent, the American people, and the international community, is left to ponder why some terrorists are given favored treatment. There appears to be, given the information that has been made available to date by the White House, no rational explanation for this inconsistency.

c. repatriation of an faln sympathizer to italy \594\

\594\ A full explanation of this issue can be found at Appendix III.

In 1984, Silvia Baraldini, an Italian national who had lived in the United States since 1961, was sentenced to 43 years in prison and fined \$50,000 for terrorist crimes linked to radical political groups, including the FALN, ``the Family'' and the May 19 Communist party.\595\ Her crimes included conspiracy and racketeering connected to armed robberies, as well as kidnapping and contempt of court.\596\ The robberies were conducted to help finance terrorist activities within the United States.\597\

\595\ Baraldini v. Thornburgh, 884 F.2d 615, 616-617 (D.C. Cir. 1989).

\596\ Baraldini v. Meese, 691 F. Supp. 432, 433, 436 (D.D.C. 1988).

\597\ Denise Lavoie, Italian Radical Moved to New York in Preparation for Return, the Associated Press, Aug. 19, 1999, PM cycle.

The contempt of court conviction was based on Baraldini's refusal to testify about her involvement with the FALN before a Federal grand jury investigating four Wall Street bombings that occurred on February 28, 1982.\598\ Baraldini had the only carbon copy of an FALN communique claiming responsibility for the bombings and the original communique was found inside a telephone booth four blocks from her apartment.\599\ The

attacks, which occurred at the New York Stock Exchange, the American Stock Exchange, the Chase Manhattan Bank, and Merrill Lynch,\600\ gravely injured three police officers.\601\

\598\ Thornburgh, 884 F.2d at 617.

\599\ Regional News, New York, United Press International, Mar. 21, 1983, AM cycle.

\600\ Thornburgh, 884 F.2d at 617.

\601\ Two More Found Guilty for Refusing to Talk in FALN Inquiry, N.Y. Times, Jan. 21, 1984, at A1.

On August 24, 1999, the Justice Department announced Baraldini's transfer to Italy under the terms of the Strasbourg Convention.\602\ This transfer occurred less than 2 weeks after President Clinton's August 11, 1999, clemency offer to the 16 FALN and Macheteros terrorists. Although Baraldini is scheduled to serve the remainder of her U.S. prison sentence under similar conditions of incarceration in Italy,\603\ there are already indications that Italian authorities have been lax in enforcing the agreed to terms.\604\ As with the offers of clemency to the 16 United States-citizen FALN and Macheteros members, the Committee is concerned that this Italian-born FALN conspirator has been given lenient treatment. The Committee is also concerned that Baraldini was given preferential treatment even though she failed to cooperate with U.S. law enforcement.

\602\ See Department of Justice statement regarding the transfer of Silvia Baraldini (Aug. 24, 1999) at Appendix III, Exhibit 1.

\603\ Letter from Oliviero Diliberto, Italian Minister of Justice, to Janet Reno, United States Attorney General (July 28, 1999).

\604\ As part of the transfer, Italy agreed to Baraldini's United States' conditions of confinement, including ``that whenever she is transported outside the prison, she must be handcuffed with a waist chain attached to the handcuffs.'' Letter from Oliviero Diliberto, Italian Minister of Justice, to Janet Reno, United States Attorney General, (July 28, 1999) (see Appendix III, Exhibit 4); letter from James K. Robinson, United States Assistant Attorney General, to Giorgio Lattanzi, General Director, Penal Affairs, Italian Ministry of Grace and Justice, including Appendices A and B (May 25, 1999) and letter from James K. Robinson, United States Assistant Attorney General, to Giorgio Lattanzi, General Director, Penal Affairs, Italian Ministry of Grace and Justice, including Appendices A and B (revised) (June 4, 1999) (see Appendix III, Exhibit 5 at 000014). Regardless of these conditions, during the Aug. 25, 1999, transfer flight from the United States to Italy, which was conducted on the Prime Minister of Italy's private jet, Baraldini ``complained that U.S. prison officials had put her in chains.'' Prisoner Welcomed Home, Palm Beach Post, Aug. 26, 1999, at 9A. The Italian guards obviously answered her complaints because Baraldini descended from the plane in Italy ``unrestrained'' and ``[w]ithout handcuffs.'' Id.; Jorge Pina, Rights-Italy: Baraldini Returns After 17 Years in U.S. Jails, Inter Press Service, Aug. 25, 1999. Although this may be a small point, it does not bode well for adherence to the agreement between the United States and Italy.

VII. The Justice Department's Decision To Prevent the FBI From Submitting an Opening Statement

On September 21, 1999, the Committee held a hearing regarding the President's grant of clemency to members of the FALN and Macheteros terrorist groups. In accordance with its rules, the Committee asked the Federal Bureau of Investigation to provide a written copy of its opening statement 24 hours prior to the hearing. Specifically, the FBI was requested to comment on historical activities of the FALN and the

Macheteros, and to provide an assessment of their current terrorist capability.

The day before the hearing, the Committee learned that the Department of Justice had denied the FBI permission to submit its written statement. In response to this information, Committee Chairman Dan Burton wrote to Attorney General Reno that day requesting that the Justice Department not prevent the FBI from submitting its written statement. Chairman Burton wrote:

As you know, the President has asserted executive privilege over records relating to his clemency decision. The President's decision has prevented the Committee and the public from determining any of his reasons for granting clemency.

However, the Committee's hearing will examine important issues relating to the threat posed by the FALN both in the past, and in the present. Accordingly, I expect that most of Assistant Director Gallagher's testimony would not have touched on issues covered by executive privilege.\605\

\605\ Letter from Dan Burton, chairman, Committee on Government Reform, to Attorney General Janet Reno, (Sept. 20, 1999), at 1. (Exhibit 87).

The view of the chairman was confirmed by Neil Gallagher, who on September 21, 1999, testified as follows regarding his

written statement:

I had a statement that was prepared for testimony before another committee approximately a week and a half ago. I attempted to cover several different areas with respect to this issue, one of which addressed the FBI's role and response to the clemency process. We sent that statement over to the Department of Justice. A determination was made that that portion of the statement was covered by executive privilege. At first it was held back because it was being resolved, and we were eventually told it was covered by executive privilege.\606\

\606\ Clemency for the FALN: A Flawed Decision? Hearing before the House Committee on Government Reform, 106th Cong., 1st Sess. (Sept. 21, 1999) (remarks of Neil Gallagher).

Apparently, by the time Assistant Director Gallagher testified at this Committee's September 21, 1999, hearing, the Department of Justice had already determined which portions of his statement were covered by executive privilege, and had informed Gallagher of its determination. Nevertheless, the Justice Department still failed to provide the Committee with a redacted version of the statement. Ultimately, the Committee was forced to issue a subpoena to the Justice Department in order to get the redacted statement. The statement was produced, pursuant to subpoena, on September 23, 1999.\607\

\607\ Exhibit 17--Draft FBI statement.

Upon reviewing the statement, it was apparent that only a very small part of the statement was covered by executive privilege. It is disappointing that the Justice Department would not work to accommodate a congressional committee in anticipation of a hearing. In addition, it is unfortunate that

the Committee was forced to resort to obtaining a document by subpoena which should have been provided voluntarily. Furthermore, when this matter was brought to the attention of the Attorney General, she made no effort whatsoever to provide the statement--even though there were no outstanding issues to resolve and it would have been relatively simple for her staff to transmit the statement to this Committee.

conclusion

The President of the United States has the power to free any Federal prisoner. With this power comes great responsibility. The President should not mislead the American people as to why he has exercised his power. This is what he appears to have done.

In the case of the clemency offer to the 16 FALN and Macheteros terrorists, the President has yet to provide a full and accurate explanation of his actions. The many inconsistencies between fact and the President's public positions create a presumption of impropriety. The President purposefully misrepresented facts, or facts were withheld from him. Either possibility is unacceptable.

The Committee believes that the President should withdraw his claim of executive privilege. The American people should be able to see for themselves what advice was given to the President, whether the safety of the American people was taken into account, and whether political considerations beyond those identified in this report played any part in the ultimate decision.

The Committee also finds that the offer of clemency to unrepentant terrorists who have done nothing to discourage violence or solve unsolved crimes diminishes our moral authority in the fight against international terrorism. The appearance that the United States is willing to undercut its own legal system in response to political pressure is an unfortunate precedent.

[The documents referred to follow:]

A P P E N D I C E S

Appendix I.--The FALN and Macheteros in Their Own Words

This appendix is a collection of communiques, manifestoes, and other documents produced by Puerto Rican pro-independence terrorists during the 1970's, 1980's and 1990's, which have been provided to this Committee. Included in these documents are the following representative statements, published by the FALN after its bombings in the 1970's, which show the violent and seditious nature of the 16 terrorists to whom President Clinton offered clemency:

[T]he Puerto Rican people are organizing and arming in order to form a People's Revolutionary Army which will rid Puerto Rico of Yanki colonialism. We have opened two fronts, one in Puerto Rico, the other in the United States . . .

[W]e fully realize that the people will not gain justice by demonstrating and shouting. The only justice that can be handed out to the murderers of our people is revolutionary justice through the implementation of revolutionary violence. . . . For each repressive act taken upon our people and fighters for Puerto Rican independence, the FALN will respond with revolutionary violence.

We, FALN, the Armed Forces of the Puerto Rican Nation, take full responsibility for the especially-detonated bomb that exploded today at Fraunces Tavern with reactionary corporate executives inside. . . . You have unleashed a storm from which you comfortable Yankis cannot escape.

To the FALN the issue is very clear: at no time can we allow an attack by the enemy upon our people to go unanswered. Fascist terror is met with revolutionary violence.

These actions demonstrate to the United States Government that the mobile guerrilla units of the FALN can hit anywhere in the United States. . . . We also want to express our solidarity with the victorious people of Vietnam, Cambodia, and Laos. Their victory is our victory!

Only a protracted, organized armed struggle can force the yanki invaders out of Puerto Rico.

We also wish to communicate our profound sorrow on the death of Chairman Mao Tse-Tung, whose teaching has inspired the FALN every step of the way.

[T]o be truly revolutionary, a party must educate and organize the masses for the seizure of power by way of an organized and disciplined vehicle, a People's Revolutionary Army. . . . The importance of a People's Revolutionary Army is that it arms the masses and produces a cadre to lead the masses to victory and the development of a Marxist-Leninist Party, tried and tested under fire . . .

[The documents referred to follow:]

(493)

Appendix III.--Repatriation of an FALN Sympathizer to Italy

In 1984, Silvia Baraldini, an Italian national who had lived in the United States since 1961, was sentenced to 43 years in prison and fined \$50,000 for terrorist crimes linked to radical political groups, including the FALN, the May 19 Communist party, and ``The Family.'' \1\ Her crimes included

conspiracy and racketeering connected to armed robberies, as well as kidnapping and contempt of court.\2\ The robberies were conducted to help finance terrorist activities within the United States.\3\

\1\ Baraldini v. Thornburgh, 884 F.2d 615, 616-617 (D.C. Cir. 1989); Department of Justice statement regarding the transfer of Silvia Baraldini (Aug. 24, 1999) [hereinafter Department of Justice statement] (Exhibit 1).

\2\ Baraldini v. Meese, 691 F. Supp. 432, 433, 436 (D.D.C. 1988); Exhibit 1--Department of Justice statement.

\3\ Denise Lavoie, Italian Radical Moved to New York in Preparation for Return, the Associated Press, Aug. 19, 1999, PM cycle.

On August 24, 1999, the Department of Justice announced Baraldini's transfer to Italy under the terms of the Strasbourg Convention.\4\ This transfer occurred less than 2 weeks after President Clinton's August 11, 1999, clemency offer to the 16 FALN and Macheteros terrorists.

\4\ Exhibit 1--Department of Justice statement.

As with the offers of clemency to the 16 United States-citizen FALN and Macheteros terrorists, the Committee is concerned that this Italian-born FALN conspirator has been given lenient treatment. The Committee is also concerned that Baraldini was given preferential treatment even though she failed to cooperate with U.S. law enforcement.

A. Baraldini's Background

Baraldini, a 51-year-old Italian national and daughter of a diplomat, lived in the United States for 38 years.\5\ She moved here in 1961,\6\ graduated from the University of Wisconsin, and was involved in the anti-war and civil rights movements.\7\ Baraldini worked as a legal assistant \8\ to Susan Tipograph, a lawyer who has represented several FALN terrorists.\9\ Baraldini also actively participated in radical political groups, including the FALN,\10\ the May 19 Communist party,\11\ and ``The Family.''\12\

\5\ Exhibit 1--Department of Justice statement; Larry Neumeister, Radical Will Serve out Term in Italian Prison, the Record (Bergen County, NJ), Aug. 25, 1999, at A4.

\6\ Denise Lavoie, Imprisoned Italian to be Released Soon, the Associated Press, Aug. 3, 1999, PM cycle.

\7\ Mark Spencer, Prisoner to Return to Her Native Italy, the Hartford Courant, Aug. 8, 1999, at B2.

\8\ Dan Collins, FBI Agent Shows Up for News Conference by Radical Group, United Press International, Nov. 12, 1982, AM cycle.

\9\ See, e.g., Guerra v. Meese, 614 F. Supp. 1430 (D.D.C. 1985); Court Papers Say FALN Leader's Lawyer Aided in Escape, the Associated Press, June 2, 1983, AM cycle.

\10\ Thornburgh, 884 F.2d at 617; United Press International, Jan. 20, 1984, AM cycle.

\11\ Meese, 691 F. Supp. at 436. The May 19 Communist party, named to commemorate the birth date of Ho Chi Minh and Malcolm X, is an organization sympathetic to other radical groups, especially the FALN and the New African Freedom Front. Dan Collins, United Press International, Nov. 12, 1982, AM cycle. ``Members of [Baraldini's May 19 group] have participated in numerous armed robberies where police officers were wounded or killed.''\12\ Thornburgh, 884 F.2d at 617. Baraldini was also the spokeswoman for the May 19 Communist party. Dan Collins, United Press International, Nov. 12, 1982, AM cycle.

\12\ ``The Family' is ``a revolutionary organization whose members

advocate the overthrow of the U.S. government through violent means.''
Meese, 691 F. Supp. at 436 (citing plaintiff's Exhibit 8). Baraldini
was a member of ``The Family's secondary team, a group of women that
facilitated the crimes by arranging for cars, safe houses, and
reconnaissance.''' U.S. v. Ferguson, 758 F.2d 843, 874 (2nd Cir. 1984).

B. Baraldini's Terrorist and Criminal Acts

Baraldini committed numerous terrorist and criminal
acts.\13\ For example, in 1983, Baraldini was held in contempt
of court for her refusal to testify about her involvement with
the FALN before a Federal grand jury investigating four Wall
Street bombings that occurred on February 28, 1982.\14\
Baraldini had the only carbon copy of an FALN communique
claiming responsibility for the bombings.\15\ The original
communique was found inside a telephone booth four blocks from
her apartment.\16\ The attacks, which occurred at the New York
Stock Exchange, the American Stock Exchange, the Chase
Manhattan Bank, and Merrill Lynch,\17\ gravely injured three
police officers.\18\

\13\ Exhibit 1--Department of Justice statement.

\14\ Thornburgh, 884 F.2d at 617. See also letter from Janet Reno,
United States Attorney General, to Giovanni Maria Flick, Italian
Minister of Grace and Justice (Apr. 14, 1998) (Exhibit 2); United Press
International, Jan. 20, 1984, AM cycle.

\15\ United Press International, Jan. 20, 1984, AM cycle.

\16\ Id.

\17\ Thornburgh, 884 F.2d at 617.

\18\ Two More Found Guilty for Refusing to Talk in FALN Inquiry,
N.Y. Times, Jan. 21, 1984, at A1.

In 1981, Baraldini attempted a \$1.6 million robbery of a
Brinks armored truck in Rockland County, NY.\19\ A Brinks guard
and two police officers were killed in the incident.\20\
Baraldini was convicted of racketeering and conspiracy.\21\ One
year earlier, Baraldini participated in the attempted-armed
robbery of an armored truck in Danbury, CT.\22\

\19\ Exhibit 1--Department of Justice statement. See also John
Pryor, United Press International, Nov. 18, 1982, AM cycle.

\20\ Exhibit 1--Department of Justice statement. See also Exhibit
2--Letter from Janet Reno, United States Attorney General, to Giovanni
Maria Flick, Italian Minister of Grace and Justice (Apr. 14, 1998).

\21\ Exhibit 2--Letter from Janet Reno, United States Attorney
General, to Giovanni Maria Flick, Italian Minister of Grace and Justice
(Apr. 14, 1998). See also Judgment N 40/99, the Court of Appeal of
Rome, Italy, Criminal Section IV (July 7, 1999) (translation)
(Continuance of Baraldini's U.S. sentence) and Order, the Court of
Appeal of Rome, Italy, Criminal Section IV (July 20, 1999)
(translation) (Making corrections to the July 7, 1999, judgment)
[hereinafter Italian judgment] (Exhibit 3).

\22\ Ferguson, 758 F.2d at 854.

In 1979, Baraldini helped Black Liberation Army leader
Joanne Chesimard successfully escape from the Clinton State
Correctional Facility in Clinton, NJ.\23\ During this crime,
Baraldini kidnapped two prison guards.\24\ Chesimard was
serving a life sentence for the murder of a New Jersey State
trooper.\25\ After her escape from New Jersey prison, Chesimard
fled to Cuba.\26\

\23\ Ferguson, 758 F.2d at 854. See also Exhibit 1--Department of
Justice statement; Salvatore Arena, Italian Sent Home to Jail, Daily

News (New York), Aug. 25, 1999, AM cycle.

\24\ Ferguson, 758 F.2d at 854.

\25\ Exhibit 1--Department of Justice statement.

\26\ Angela Singer, Torture of Women Prisoners in America--The Land of the Free, Universal News Services, May 18, 1990.

C. Baraldini's Convictions and Sentences

In 1984, Baraldini was convicted in Federal court in New York of, and sentenced for, the following crimes: \27\

\27\ U.S. v. Baraldini, 803 F.2d 776, 777 (2nd Cir. 1986); Exhibit 3--Italian judgment.

Crime	Statute	Sentence (years)
Conspiracy to violate the RICO Statute.	18 U.S.C. Sec. Sec. 1961, 1962(d).	20 years
Substantive Violation of RICO Statute.	18 U.S.C. Sec. Sec. 1961, 1962(c).	20 years
Contempt of Court.....	18 U.S.C. Sec. 401....	3 years

The court required that the sentences be served consecutively, and recommended that Baraldini receive no parole.\28\ Because of accumulated good conduct credits, however, Baraldini's mandatory release date is in March 2008.\29\

\28\ Baraldini, 803 F.2d at 777.

\29\ Exhibit 1--Department of Justice statement.

D. Italy's Attempts to Win Baraldini's Freedom

In 1989, 300 Italian lawmakers, predominately representing the left, began a campaign to win Baraldini's freedom.\30\ These lawmakers requested that Italy's President, Francesco Cossiga, ask for a grant of clemency or, at a minimum, deportation to Italy.\31\ Emilio Vesce, a Radical party leader, stated Baraldini's release would be a ``humanitarian gesture'' and that this matter was not about ``dealing with questions of guilt or innocence.'' \32\ Supporters cited a variety of reasons to release Baraldini, including claims that she received an excessive sentence, ``was not convicted of committing violent acts herself,'' and received improper medical attention and insufficient exercise while in prison.\33\

\30\ Clyde Haberman, Italy Lawmakers Seek U.S. Convict's Release, the New York Times, Mar. 5, 1989, at A8.

\31\ Id.

\32\ Id.

\33\ Id. In contrast to these claims, however, the Second Circuit held that ``Baraldini's sentence was not excessive,'' Ferguson, 758 F.2d at 856, and the D.C. Circuit held that she ``personally participated in the violent and criminal activities,'' Thornburgh, 884 F.2d at 620. Baraldini also received medical attention, including ``surgery after developing ovarian cancer,'' while in prison. Angela Singer, Torture of Women Prisoners in America--The Land of the Free, Universal News Services, May 18, 1990.

This constant pressure by certain Italian lawmakers to reverse the United States position on Baraladini's extradition continued for the next 10 years. For example, Italian President Oscar Luigi Scalfaro ``raised the issue with [President Clinton]'' during a 1996 visit.\34\ In April 1998, Italy requested for the fifth time that Baraladini be allowed to serve out the remainder of her sentence in Italy.\35\ The following month, in May 1998, over 200 Italian lawmakers asked Prime Minister Romano Prodi to request Baraladini's transfer to Italy.\36\ Most of these lawmakers belonged to the ruling center-left party.\37\

\34\ Deputies Urge Prodi to ask U.S. for Transfer of Italian Prisoner, Agence France Presse, May 4, 1998.

\35\ Id.

\36\ Id.

\37\ Id.

Through 1998, however, the United States adamantly refused every transfer request, five refusals in total,\38\ to allow Baraladini to serve the rest of her sentence in Italy. The United States based these rejections on a variety of reasons, including the United States' tough stance against terrorism and crime, the severity of Baraladini's crimes, Baraladini's lack of remorse, Baraladini's apparent refusal to cooperate with investigators, and the risk Baraladini would not serve her full term or that she would receive lenient jail treatment in Italy.\39\

\38\ Id.; Exhibit 2--Letter from Janet Reno, United States Attorney General, to Giovanni Maria Flick, Italian Minister of Grace and Justice (Apr. 14, 1998).

\39\ Exhibit 2--Letter from Janet Reno, United States Attorney General, to Giovanni Maria Flick, Italian Minister of Grace and Justice (Apr. 14, 1998).

E. The Clinton Administration's Sudden Reversal on Baraladini's Repatriation to Italy

On February 3, 1998, a United States military jet severed a cable supporting a gondola ascending Mount Cermis near Aviano, Italy.\40\ Twenty people were killed in this tragedy.\41\ After a United States military aviator was acquitted on 20 counts of involuntary manslaughter, it was reported that an outraged Italian Prime Minister Massimo D'Alema agreed to tone down demands to President Clinton punish those responsible for the accident ``if the United States handed over Silvia Baraladini.''\42\ Prime Minister D'Alema denied the charges in March 1999.\43\ However, on April 10, 1999, media outlets reported that anonymous sources said ``[t]he United States is considering returning a jailed radical to her native Italy, a gesture that could appease anger over acquittal of an American military pilot in 20 deaths at an Italian ski resort.''\44\ The reports also stated that Department of Justice officials were making plans to meet with their Italian counterparts to discuss the transfer.\45\

\40\ D'Alema expects U.S. to Find and Punish Guilty Parties in Cable Car Crash, the Associated Press Worldstream, Mar. 9, 1999.

\41\ Id.

\42\ Id.

\43\ Id.

\44\ Anne Gearnan, U.S. Considers Return of Prisoner to Italy; Gesture Eyed in Light of Gondola Deaths, the Boston Globe, at A8. See

also U.S. Agrees to Allow Jailed Italian Radical to Finish Term at Home, Chicago Tribune, June 12, 1999, at 19; U.S. Might Free Italian Radical: Move Might Appease Anger Over Gondola Deaths, the Gazette (Montreal), Apr. 10, 1999, at A22.

\45\ Anne Gearnan, U.S. Considers Return of Prisoner to Italy; Gesture Eyed in Light of Gondola Deaths, the Boston Globe, at A8.

On June 11, 1999, U.S. Ambassador to Italy Thomas Foglietta announced Baraldini's transfer to Italy, stating that ``the gesture was `important' for the American-Italian partnership.'' \46\ Ambassador Foglietta also commented that ``I believe that today's agreement will strengthen that partnership.'' \47\ Reports also stated that Baraldini's transfer was a ``reward for Italy's unwavering support of NATO during the Kosovo conflict, as well as a way to ease anger over the acquittal of an American military pilot.'' \48\ A Baraldini article in Milan, Italy's newspaper, Il Giorno, began with the headline ``In Exchange for Cermis.'' \49\ However, the Department of Justice claims Baraldini's release had nothing to do with the Aviano tragedy or Kosovo.\50\ The Committee has not determined the administration's underlying motivations for Baraldini's return to Italy.

\46\ U.S. Agrees to Allow Jailed Italian Radical to Finish Term at Home, Chicago Tribune, June 12, 1999, at 19.

\47\ Id.

\48\ Id.

\49\ Ellen Knickmeyer, Italian Convicted in United States Gets Hero's Welcome on Transfer to Rome, Associated Press Worldstream, Aug. 25, 1999.

\50\ Denise Lavoie, Imprisoned Italian to be Released Soon, the Associated Press, Aug. 3, 1999, PM cycle.

More than 2 months after Ambassador Foglietta's announcement, the Department of Justice first announced details about the agreement, stating the transfer was a result of ``many years of discussion between the United States and Italy.'' \51\ Baraldini would be repatriated to Italy pursuant to the Strasbourg Convention.\52\ The Department of Justice found that ``[a]s negotiated, [Baraldini's] transfer satisfies the two goals of prisoner transfer set out in the Strasbourg Convention: (1) the ends of justice, in that she will serve out her entire United States sentence in a manner comparable to the service of the sentence in the United States, and (2) the social rehabilitation of the prisoner, in that she will serve the remainder of that sentence in Italy close to her family.'' \53\ Since the United States had refused Baraldini's transfer for 10 years, one must question the sudden reversal in the U.S. position, especially when the same goals could not be met for the 1998 request for transfer.

\51\ Exhibit 1--Department of Justice statement.

\52\ If certain criteria are met, the Strasbourg Convention (formally known as the Council of Europe Convention on the Transfer of Sentenced Persons) ``allows a foreign national to transfer to his or her home country to serve the remainder of a sentence imposed by the country in which the foreign national committed an offense.'' Exhibit 1--Department of Justice statement. The United States entered Strasbourg Agreement into force on July 1, 1985.

\53\ Exhibit 1--Department of Justice statement.

First, there is legitimate concern as to whether Baraldini will fully serve out her prison sentence in conditions similar to those imposed in the United States. Although news reports claim that Baraldini's transfer was made possible because

``[a]n obstacle was removed when an appeals court in Rome formally recognized U.S. prison sentences,'' \54\ there is still an ever-present concern over Italy's ``notoriously lax and leaky prisons.'' \55\ Over the years, the United States has had to ``rebuff several Italian governments . . . [for] the tradition of granting amnesties to inmates, including convicted terrorists.'' \56\ Italy's former Ambassador to Moscow, Sergio Romano, believes that the Italian system is a disaster, where ``the guilty are left free to roam the streets.'' \57\ Noting his country's failure to ``guarantee its citizens justice,'' Ambassador Romano also warned in 1998 that ``it was clear why the Americans have no intention of allowing Silvia Baraldini to serve her prison sentence in Italy.'' \58\ Regardless of the length remaining of Baraldini's sentence, Italian ``supporters say they will now press for her release.'' \59\ Furthermore, demonstrating complete disregard for the transfer agreement and Baraldini's crimes, Elizabeth Fink, Baraldini's lawyer in New York, stated that ``the only right thing for Italy to do is to free Baraldini.'' \60\

\54\ Larry Neumeister, Radical Will Serve out Term in Italian Prison, the Record (Bergen County, NJ), Aug. 25, 1999, at A4.

\55\ James P. Pinkerton, A Tough, if Convenient, Policy on Terrorism, Newsday, Aug. 31, 1999, at A34. For example, ``a Palestinian terrorist--found guilty of murdering an American Jewish tourist during the hijack of the Achille Lauro cruise liner--[escaped] from an Italian prison while on weekend leave.'' Robert Graham, Allies at Odds over Extradition, Financial Times, July 8, 1996, at 9.

\56\ Court Ruling in Rome Clears Way for Italian Woman's Return, the Associated Press Worldstream, July 9, 1999.

\57\ Sergio Romano, Why Italian Justice is a Disaster, the European, May 25, 1998, at 28.

\58\ Id. Additionally, the press has reported that ``there were suggestions Italy might choose to free her on medical grounds.'' Ellen Knickmeyer, Italian Convicted in United States Gets Hero's Welcome on Transfer to Rome, Associated Press Worldstream, Aug. 25, 1999.

\59\ Ellen Knickmeyer, Italian Convicted in United States Gets Hero's Welcome on Transfer to Rome, Associated Press Worldstream, Aug. 25, 1999.

\60\ Italy: Jailed Radical's Return Creates Political Storm, British Broadcasting Corp., Aug. 26, 1999.

Examining the agreement made between the United States and Italy pursuant to the Strasbourg Convention, it appears that Italy has already been lax regarding security measures. As part of the transfer, Italy agreed that Baraldini ``will continue to be kept in prison in Italy . . . on the conditions agreed, similar to those that exist in the United States[,]'' including all conditions of U.S. confinement listed in Appendix B of the Department of Justice's June 4, 1999, letter.\61\ Appendix B, Section (a) states ``that whenever [Baraldini] is transported outside the prison, she must be handcuffed with a waist chain attached to the handcuffs.'' \62\ Regardless of these conditions, during Baraldini's August 25, 1999, transfer flight from the United States to Italy, Baraldini ``complained that U.S. prison officials had put her in chains.'' \63\ The Italian guards were obviously sympathetic to her complaints because Baraldini descended from the plane in Italy ``unrestrained'' \64\ and ``[w]ithout handcuffs on her wrists.'' \65\ The Committee hopes that Italy will take better steps to ensure Baraldini fully and fairly serves out her sentence.

\61\ Letter from Oliviero Diliberto, Italian Minister of Justice, to Janet Reno, United States Attorney General, (July 28, 1999) (Exhibit 4); letter from James K. Robinson, United States Assistant Attorney

General, to Giorgio Lattanzi, General Director, Penal Affairs, Italian Ministry of Grace and Justice, including Appendices A and B (May 25, 1999) and letter from James K. Robinson, United States Assistant Attorney General, to Giorgio Lattanzi, General Director, Penal Affairs, Italian Ministry of Grace and Justice, including Appendices A and B (revised) (June 4, 1999) (hereinafter U.S. Conditions of Confinement) (Exhibit 5).

\62\ Exhibit 5--U.S. Conditions of Confinement at 000014.

\63\ Prisoner Welcomed Home, Palm Beach Post, Aug. 26, 1999, at 9A.

\64\ Id.

\65\ Jorge Pina, Rights-Italy: Baraldini Returns After 17 Years in U.S. Jails, Inter Press Service, Aug. 25, 1999. Although this may be a small point, it does not bode well for adherence to the agreement between the United States and Italy.

Second, the Department of Justice's endorsement of the need for Baraldini to be in Italy, close to her family for social rehabilitation purposes, is not convincing. As recently as 1998, the Department of Justice found that Baraldini's humanitarian reasons for release ``were outweighed by the nature of the offenses for which Ms. Baraldini was convicted.''

\66\ Neither the humanitarian reason nor the nature of the offenses changed from 1998 to 1999. Although it is legitimate for a criminal to want family members to visit them in prison, it is well-established that prisoners in the United States have ``no right to be incarcerated in any specific institution,' and there is no right to be proximate to one's family.\67\ It is a concern to the Committee that such a privilege has been extended to a foreign terrorist who has committed violent crimes in the United States.

\66\ Exhibit 2--Letter from Janet Reno, United States Attorney General to Giovanni Maria Flick, Italian Minister of Grace and Justice (Apr. 14, 1998).

\67\ Meese, 691 F. Supp. at 448.

F. Baraldini's Reception in Italy

The Italian Government provided Baraldini with a grand celebration during her August prison transfer. She flew from New York to Rome on one of the Prime Minister's jets,\68\ and was welcomed by Justice Minister Oliviero Diliberto, as well as by a jubilant crowd of 600 throwing flowers and waving hammer-and-sickle flags.\69\ Diliberto ``called [Baraldini's] return a humanitarian victory over a harsh prison system.''\70\ Several Italian city governments, including the Palermo city government, even went so far as to call Baraldini ``a symbol of injustice,' and made her an honorary citizen.\71\ She received a hug and roses from Armando Cossutta, head of the Italian Communist party, inside the prison.\72\

\68\ Italy Jailed Radical's Return Creates Political Storm, British Broadcasting Corp., Aug. 26, 1999.

\69\ Massive Security Greet the Return of Terrorist to Italy; The Government Said it Gave No Special Treatment to Silvia Baraldini, Who has Served 16 Years in U.S. Jails, the Orlando Sentinel, Aug. 26, 1999, at A4.

\70\ Id.

\71\ Jorge Pina, Rights-Italy: Baraldini Returns After 17 Years in U.S. Jails, Inter Press Service, Aug. 25, 1999; Frances D'Emilio, Convicted Terrorist Returns To Rome, the Associated Press Online, Aug. 25, 1999.

\72\ Massive Security Greet the Return of Terrorist to Italy; The Government Said it Gave No Special Treatment to Silvia Baraldini, Who

has Served 16 Years in U.S. Jails, the Orlando Sentinel, Aug. 26, 1999, at A4.

Baraldini's greeting outraged a number of Italian politicians, along with some Italian jurists, who saw in the welcome an official blessing of her past by the government of Prime Minister D'Alema, a former communist.\73\

\73\ Daniel Williams, Hero's Welcome for Felon Jolts Italy Out of Doldrums, the Gazette (Montreal), Aug. 29, 1999, at A6.

G. Sending an Inconsistent Message on Terrorism

President Clinton's decision to transfer Silvia Baraldini to Italy before she finished serving her 43-year sentence in the United States raises a number of concerns. In addition to allowing Italian radicals to glorify a violent anti-American terrorist and turn her into a heroine, Baraldini's transfer, like the grant of clemency to members of the FALN, sends an inconsistent message on terrorism.

As with the FALN clemency grant, President Clinton failed to secure any cooperation from Baraldini in solving unsolved crimes. Baraldini also avoided the basic requirement the FALN terrorists had to fulfill to gain clemency: the renunciation of violence.\74\ During a jailhouse news conference, however, Baraldini made it clear just how she felt: ``I have never repented for what I have done in the past.''\75\ Overall, the Baraldini decision sends the message that the United States will be lenient with terrorists, and that prisoners do not have to renounce violence against American citizens before being released from American prisons.

\74\ Another Clinton Terrorist Outrage, the New York Post, Sept. 8, 1999, at 30.

\75\ Daniel Williams, Italy Split as Radical Gets Hero's Welcome; Convicted Felon Returns After Years in U.S. Prison, the Washington Post, Aug. 28, 1999, at A13.

[The documents referred to follow:]

DISSENTING VIEWS OF HON. HENRY A. WAXMAN, HON. TOM LANTOS, HON. MAJOR R. OWENS, HON. EDOLPHUS TOWNS, HON. PAUL E. KANJORSKI, HON. PATSY T. MINK, HON. ELEANOR HOLMES NORTON, HON. CHAKA FATTAH, HON. ELIJAH E. CUMMINGS, HON. DENNIS J. KUCINICH, HON. DANNY K. DAVIS, HON. JOHN F. TIERNEY, HON. THOMAS H. ALLEN, HON. HAROLD E. FORD, JR., AND HON. JANICE D. SCHAKOWSKY

We have differing views about the wisdom of the President's August 11, 1999, decision to grant clemency to 16 Puerto Rican nationalists. Some of us support the President's decision. Many of us oppose the decision and have voted for a resolution opposing the decision.\1\ However, we are united in our view that the majority's report reaches unsubstantiated conclusions.

\1\ On Sept. 9, 1999, the House of Representatives voted 311-41 (with 72 members voting ``present') for H. Con. Res. 180 expressing the sense of the House that the President should not have granted clemency to the 16 individuals in question. On Sept. 14, 1999, the Senate voted 95-2 for S.J. Res. 33, similarly disagreeing with the President's decision.

The majority report errs by transforming legitimate

differences of opinion into allegations of wrongdoing and personal attacks. The majority report finds that the President ``use[d] the immense power of his office to mislead.'' It accuses clemency supporters of engaging in ``a calculated effort to mislead people.'' It repeatedly characterizes legal and legitimate actions as ``inappropriate.'' These findings and allegations are not supported by the record before the Committee. We therefore dissent from the majority report.

I. The President's Clemency Decision

The President's power to commute sentences stems from the pardon power granted to the President in Article 2, Section 2 of the Constitution.\2\ That power is exclusive and absolute, and not subject to any restrictions from the Congress. The Supreme Court has held that the pardon power ``flows from the Constitution alone, not from any legislative enhancements, and . . . cannot be modified, abridged, or diminished by Congress.'' \3\

\2\ The President ``shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.''

\3\ Schick v. Reed, 419 U.S. 256, 266 (1974).

On August 11, 1999, President Clinton used this power to offer to commute the prison sentences of 16 individuals convicted of various criminal offenses relating to their involvement in two radical Puerto Rican independence organizations. The clemency offers were conditioned on the prisoners' willingness to renounce violence and accept certain restrictions on their freedom of travel and association.

In a letter to Representative Waxman on September 21, 1999, President Clinton explained the rationale for his decision.\4\ He stated that ``the prisoners were serving extremely lengthy sentences--in some cases 90 years--which were out of proportion to their crimes.'' He explained: ``whatever the conduct of other FALN members may have been, these petitioners--while convicted of serious crimes--were not convicted of crimes involving the killing or maiming of any individuals. For me, the question, therefore, was whether the prisoners' sentences were unduly severe and whether their continuing incarceration served any meaningful purpose.'' The President stated that in his view, ``equity and fairness dictated'' that their sentences be reduced.

\4\ Letter from President Clinton to Representative Henry Waxman (Sept. 21, 1999). The President's letter is attached to these views as Exhibit 1.

The President also stated that he ``rejected'' the argument that the prisoners were political prisoners or prisoners of conscience. He made clear that ``no form of violence is ever justified as a means of political expressions in a democratic society based on the rule of law.''

In addition, the President stated that there had been an active and lengthy campaign on behalf of the prisoners. He observed that ``various Members of Congress, a number of religious organizations, labor organizations, human rights groups, and Hispanic civic and community groups supported clemency. The petitioners also received widespread support across the political spectrum within Puerto Rico.'' \5\ He also noted that ``the petitioners received worldwide support on humanitarian grounds from numerous quarters'' including such prominent figures as former President Jimmy Carter, Archbishop

Desmond Tutu, and Coretta Scott King.

\5\ Documents obtained by the Committee indicate that the Members of Congress who lobbied for clemency included Representatives Jose Serrano, Nydia Velazquez, Luis Gutierrez, Charles Rangel, Danny Davis, Eliot Engel, Maxine Waters, Patsy Mink, and Bobby Rush. Letters from these Members, as well as other materials from clemency supporters, are attached to these views as Exhibit 2.

Finally, the President disputed accusations that he had not taken opposing views into account. He stated that he had ``sought and considered the views of the Department of Justice.'' He also stated: ``Press reports note that certain Federal Bureau of Investigation and Justice Department officials . . . were opposed to clemency. I did not dismiss those concerns, as some have implied. Rather, I carefully weighed them.'' He also recognized that ``there are victims of FALN-related violence who feel strongly that these individuals . . . should serve the full sentences imposed.''

II. The Merits of the Clemency Decision

The merits of the President's decision are debatable. Some independent observers have supported the decision. For example, the editorial board of the Washington Post wrote:

Whatever the President's motives, the case for clemency is strong. . . . the people in question were charged with and convicted of serious crimes . . . But they were crimes in which nobody was hurt or killed. Their sentences on each count, moreover, were imposed consecutively, meaning that their total sentences range as long as 90 years in prison. This is very difficult to justify, especially when compared with other sentences in similar cases.\6\

\6\ Puerto Rican Clemency, Washington Post (Sept. 10, 1999).

Others have raised serious doubts about the decision. At the September 21, 1999, hearing, Representative Henry Waxman, the ranking minority member, released a draft letter from the FBI Director, Louis J. Freeh, that criticized the decision.\7\ According to the draft letter released by Representative Waxman: ``the FBI has consistently advised the Department of Justice (DOJ), in writing, that the FBI was opposed to any such pardon and/or commutation of sentences for any of these individuals. . . . DOJ was also advised the FBI had reason to expect the release of these individuals would `psychologically and operationally enhance' the ongoing criminal activities of Puerto Rican terrorist groups. The FBI also pointed out that any such pardon of the `currently incarcerated terrorists would likely return committed, experienced, sophisticated and hardened terrorists to the clandestine movement.' ''

\7\ Draft letter from Louis J. Freeh to Representative Henry Hyde, Justice Department Document production 001951-001952. The letter appears to be a draft response to an inquiry from Judiciary Committee Chairman Henry Hyde regarding the clemency decision. It is not signed.

Ultimately, any decision to grant clemency requires the exercise of judgment in weighing the arguments for and against clemency. Under the Constitution, that judgment is entrusted to the President. While some of us may disagree with the President's decision to grant clemency to these 16 individuals, we have not seen any evidence that contradicts the view that

the President's judgment was made in good faith and on the merits.

III. The Majority's Allegations

Soon after the clemency offers were made, many Republican leaders alleged that the President's decision was intended to boost the potential New York Senate campaign of First Lady Hillary Clinton. Appearing on NBC's ``Meet the Press,''
Chairman Burton stated: ``The President should not be pardoning these people under any circumstances, and there's some indication it may be for political purposes. . . . [H]is wife is running for--may be running for the United States Senate in New York, and there's a large Puerto Rican constituency up there. And there's a lot of people in Washington that are questioning whether or not this is related to that.''

\8\ ``Meet the Press,''

NBC News (Aug. 29, 1999).

Other Republican leaders made similar claims. According to Senator Orrin Hatch, chairman of the Senate Judiciary Committee, ``almost anybody with brains would conclude'' that the clemency offers were designed to help the First Lady's senatorial campaign.\9\ Senator Phil Gramm, chairman of the Senate Banking Committee, said that ``[t]his was an effort by the President, by the First Lady, to manipulate politics in New York.''

\9\ ``Fox News Sunday,''
\10\ ``This Week,''

Fox News (Sept. 19, 1999).
ABC News (Sept. 5, 1999).

Although the majority's report is voluminous, it does not contain evidence linking the President's decision to a desire to boost the Senate campaign of the First Lady. As an investigative body, this Committee should limit its findings to the evidence gathered during the investigation. Based on what the Committee has learned to date, the record does not substantiate the allegations related to the First Lady's possible Senate campaign.

The majority report also contains numerous other unsubstantiated allegations. For example, it alleges that ``the President use[d] the immense power of his office to mislead.''
It also alleges at various points that the actions taken by White House staff in this matter were ``inappropriate,''
``troubling,''
and ``disturbing.''
These allegations are not supported by the evidence.

The record before the Committee does not support the allegation that the President sought to mislead the public about the rationale for his decisions. Instead, to support this allegation, the majority report relies on legitimate disagreements over the harshness of the sentences received by the 16 prisoners and the relative severity of the crimes they committed. While these disagreements are intensely argued by clemency supporters and opponents, they are not evidence that the President used ``the immense power of his office to mislead.''

The majority report also attempts to label various legitimate and routine actions as ``inappropriate,''
``troubling,''
and ``disturbing.''
For example, the majority report notes that participants at a White House meeting on the clemency issue described clemency as a ``high priority PR [Puerto Rico] issue.''
The majority report suggests that ``[t]his indicates a level of political calculation that is troubling.''
The fact that White House staff were aware that the prisoners were a major issue in the Puerto Rican community

is not ``troubling''--indeed, it would be more troubling if the President's staff were ignorant of that fact.

In another instance, the majority report notes that the Deputy Attorney General asked the Pardon Attorney to inquire with a congressional supporter of clemency into the status of obtaining statements from the prisoners expressing repentance for their crimes. It then goes on to characterize this request as a ``highly inappropriate.'' Obtaining statements of repentance from the prisoners, however, is an entirely legitimate request, particularly given the President's decision to condition clemency on the prisoners' willingness to renounce violence.

In sum, instead of simply disagreeing with the President's decision on the merits, the majority report attempts to transform legitimate criticisms of the President's decision into unsubstantiated allegations. The majority report concludes by asserting that the President's decision should be viewed with a ``presumption of impropriety.'' Impropriety, however, should be demonstrated, not presumed.

IV. The President's Assertion of Executive Privilege

The majority report criticizes the President for invoking executive privilege over a small number of documents relating to his decision. We disagree with this criticism and believe that the President's assertion of executive privilege in this case was entirely proper.

In September 1999, Chairman Burton issued multiple subpoenas to the White House and the Department of Justice demanding documents relating to the President's decision to grant clemency to the 16 Puerto Rican nationalists.\11\ In response to these subpoenas, the Executive branch produced approximately 10,000 pages of documents.

\11\ Subpoenas from Committee on Government Reform to the Executive Office of the President (Sept. 1, 1999) and Department of Justice (Sept. 1 and 16, 1999).

At the request of the President, however, Attorney General Janet Reno reviewed a number of other documents relating to internal deliberations among staff, recommendations to the President, and the President's decisionmaking to determine if this material was subject to a proper assertion of executive privilege.\12\ The Attorney General concluded that the White House could properly assert executive privilege over those documents.\13\ This interpretation appears to be supported by legal standards and historical precedents.

\12\ Letter from Attorney General Janet Reno to President Clinton (Sept. 16, 1999).

\13\ Id.

The concept of executive privilege was first invoked by President George Washington.\14\ More recently, executive privilege has been asserted by Presidents Eisenhower, Kennedy, Nixon, Ford, Carter, Reagan, and Bush.\15\ The Supreme Court explicitly addressed the issue of executive privilege in 1974 in *United States v. Nixon*. In recognizing the privilege, the unanimous court articulated the reasons and constitutional basis behind such a privilege:

\14\ Letter from Assistant Attorney General W. Lee Rawls to Senator Howard Metzenbaum (July 1, 1991).

\15\ See letter from Assistant Attorney General W. Lee Rawls to Senator Howard Metzenbaum (July 1, 1991).

[T]he importance of this confidentiality is too plain to require further discussion. Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision making process. Whatever the nature of the privilege of confidentiality of Presidential communications in the exercise of Art. II powers, the privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of the confidentiality of Presidential communication has similar constitutional underpinnings.\16\

\16\ 418 U.S. 683, 705 (1974).

The Court went on to state:

The expectation of a President to the confidentiality of his conversation and correspondence, like the claim of confidentiality in judicial deliberations, for example, has all the values to which we accord deference for the privacy of all citizens and, added to those values, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision making. A president and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately. These are the considerations justifying a presumptive privilege for Presidential communications. The privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution.\17\

\17\ Id., at 708.

In the case of the President's clemency decision, the assertion of executive privilege was fully justified. The documents being sought by the Committee contained advice and recommendations presented to the President and his advisors. They involved the pardon power, which the Constitution entrusts exclusively to the President. There was no credible evidence of illegal conduct by the President or his advisors. As stated by the Washington Post, ``if executive privilege does not cover the Puerto Rico flap, it does not meaningfully exist.''\18\

\18\ Executive Privilege--Again, Washington Post (Sept. 19, 1999).

V. Conclusion

Although many Democrats oppose the President's decision, the majority made no attempt to find consensus with the Committee's minority members. Instead, the majority report appears to be designed to score political points, not reach the truth. It is based on unsubstantiated allegations and innuendo, not the facts and evidence before the Committee. We therefore dissent.

Hon. Henry A. Waxman.
Hon. Tom Lantos.
Hon. Major R. Owens.
Hon. Edolphus Towns.
Hon. Paul E. Kanjorski.
Hon. Patsy T. Mink.
Hon. Eleanor Holmes Norton.
Hon. Chaka Fattah.
Hon. Elijah E. Cummings.
Hon. Dennis J. Kucinich.
Hon. Danny K. Davis.
Hon. John F. Tierney.
Hon. Thomas H. Allen.
Hon. Harold E. Ford, Jr.
Hon. Janice D. Schakowsky.

[The documents referred to follow:]